DOCUMENT RESUME

ED 332 928 SO 021 408

AUTHOR Patrick, John J.; Leming, Robert S.
TITLE How To Teach the Bill of Rights.
INSTITUTION B'nai B'rith, New York, N.Y. Anti-Defamation League.; ERIC Clearinghouse for Social Studies/Social Science Education, Bloomington, IN.
SPONS AGENCY Office of Educational Research and Improvement (ED), Washington, DC.
REPORT NO ISBN-0-88464-135X
PUB DATE 91
CONTRACT RI88062009
NOTE 114p.
PUB TYPE Guides - Classroom Use - Teaching Guides (For Teacher) (052) -- Information Analyses - ERIC Clearinghouse Products (071)

EDRS PRICE MF01/PC05 Plus Postage.
DESCRIPTORS Annotated Bibliographies; *Citizenship Education; *Constitutional History; *Constitutional Law; Curriculum Development; Democratic Values; Educational Resources; History Instruction; *Law Related Education; Learning Strategies; Secondary Education; Secondary School Curriculum; Social Studies; Teaching Methods; *United States History
IDENTIFIERS *Bill of Rights; Supreme Court; *United States Constitution

ABSTRACT

Directed to secondary school teachers of history, government, and civics, this book is designed to fit common educational objectives in secondary school curriculum guides that call for teaching and learning about the United States Constitution and Bill of Rights. The volume is intended to encourage careful reading, analysis, and classroom discussion of primary documents and legal case studies on Bill of Rights issue in U.S. history and contemporary society. The book is divided into seven chapters. Chapters 1 and 2 introduce the contents and meaning of the Federal Bill of Rights and provide a rationale and guidelines for teaching about constitutional rights and liberties. Chapters 3-6 include background knowledge and insights about the making of the Bill of Rights, key civic values in the Bill of Rights, the role of the Supreme Court in protecting constitutional rights, and Bill of Rights issues in five landmark cases of the Supreme Court. Teachers should draw upon the chapters of this volume to develop lesson plans and learning activities for their secondary school courses in history, civics, and government. Teachers will be able to use the substance of chapters 3-6 in their implementations of 12 lesson plans included in these chapters. Chapter 7 of this volume is a guide to resources for teachers on the Bill of Rights. It includes a select annotated bibliography of various kinds of teaching and learning materials including video programs, poster sets, case study books, mock trial simulations, and handbooks with various types of lesson plans and teaching strategies. The appendices in this volume include the complete text of the U.S. Constitution and an annotated table and index of Supreme Court cases mentioned or discussed in chapters 1-7. (DB)

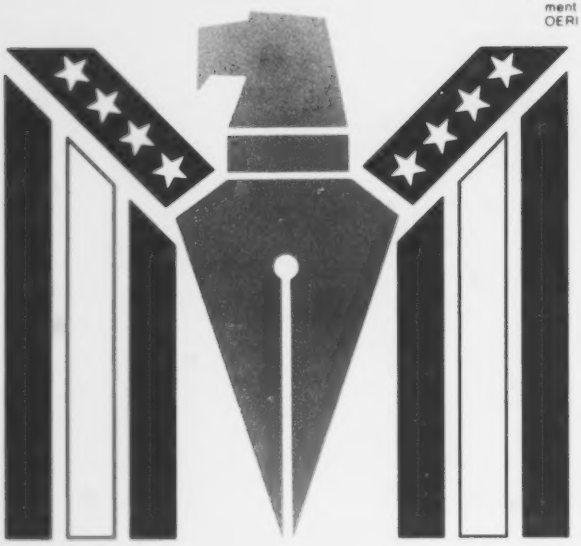
U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

This document has been reproduced as received from the person or organization originating it.

Minor changes have been made to improve reproduction quality.

Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

ED332928



HOW TO TEACH

THE BILL OF RIGHTS

BY JOHN J. PATRICK
WITH ROBERT S. LEMING

BEST COPY AVAILABLE

SO 021 408

HOW TO TEACH

THE BILL OF RIGHTS

by
John J. Patrick
with the
assistance of Robert S. Leming

Anti-Defamation League of B'nai B'rith, New York, NY in association with the ERIC Clearinghouse for Social Studies/Social Science Education at the Social Studies Development Center, Indiana University, Bloomington, IN

First Edition

This publication can be ordered from the
Anti-Defamation League of B'nai B'rith;
823 United Nations Plaza, New York, NY 10017;
(212) 490-2525; FAX: (212) 867-0779.

Copyright 1991 by the
Anti-Defamation League of B'nai B'rith
Printed in the U.S.A.

ISBN 0-88464-135X
Library of Congress Catalog Card Number 90-85556

This publication was developed for the Anti-Defamation League of B'nai B'rith by the ERIC Clearinghouse for Social Studies/Social Science Education at Indiana University with support from the Office of Educational Research and Improvement (OERI) of the U.S. Department of Education, under contract no. RI88062009. The opinions expressed do not necessarily reflect the positions or policies of OERI or the U.S. Department of Education.

Book design: Janet Reisig

Table of Contents

About the Authors v

About the ADL and ERIC/ChESS v

Acknowledgments vi

How to Use This Book vii

BACKGROUND

Chapter 1: What Is the Bill of Rights? 1

Chapter 2: Why Teach the Bill of Rights? 9

KEY IDEAS, LESSONS, AND ACTIVITIES

Chapter 3: Origin and Creation of the Bill of Rights 17

Lesson 1: George Mason's "Objections" 19

Lesson 2: Madison's Ideas on a Bill of Rights 25

Lesson 3: Using Facts in a Bill of Rights Timetable 28

Chapter 4: Civic Values in the Bill of Rights 29

Lesson 4: Civil Liberties in the Constitution 31

Lesson 5: Two Views of Free Speech 37

Lesson 6: Your Constitutional Right to Freedom of Speech 37

Chapter 5: The Supreme Court and Constitutional Rights 41

Lesson 7: Judicial Review and the Bill of Rights 44

Lesson 8: The Bill of Rights and the 14th Amendment 47

Lesson 9: Decisions About Fourth Amendment Rights 51

Chapter 6: Bill of Rights Issues in the United States 53

Lesson 10: Analyzing a Supreme Court Case 60

Lesson 11: Bill of Rights Issues in Supreme Court Cases 61

Lesson 12: A Classroom Forum on Bill of Rights Issues 62

RESOURCES

Chapter 7: Guide to Materials for Teaching the Bill of Rights 63
Materials Available through ERIC 77
Materials Available from the ADL 78

APPENDICES

Constitution of the United States 81

Table and Index of Supreme Court Cases 97

REFERENCES 105

About the Authors

John J. Patrick is Director of the Social Studies Development Center, Director of the ERIC Clearinghouse for Social Studies/Social Science Education, and Professor of Education at Indiana University. Dr. Patrick has been a teacher of history and civics in secondary schools in Indiana and Illinois. Dr. Patrick is the author of Chapters 1-6 of this volume.

Robert S. Leming is Director of the Indiana Program for Law-Related Education at the Social Studies Development Center, Indiana University. He has been a teacher of history and government in secondary schools in Michigan, Indiana, and the Virgin Islands. Mr. Leming is the author of Chapter 7 of this volume. He also compiled the Table of Supreme Court Cases at the end of this volume.

About the ADL and ERIC/ChESS

The ADL. Since its founding in 1913 the Anti-Defamation League has championed the Bill of Rights. One of the ADL's principal purposes is to secure justice and fair treatment for all people.

The League has long fought against prejudice and discrimination at home and against totalitarianism abroad. The League has supported legislation to end discrimination against minorities in public accommodations, in educational institutions, as well as in the workplace. The ADL's professional staff in national and regional offices throughout the United States offers consultative services to school, community, religious, and government agencies in need of training and materials to fight prejudice and support American values and ideals.

A description of materials available from the ADL appears on page 78.

ERIC/ChESS. ERIC (Educational Resources Information Center) is part of the U.S. Department of Education. ERIC includes a nationwide network of sixteen clearinghouses, each one specializing in a different field of education. ERIC/ChESS is the acronym for the ERIC Clearinghouse for Social Studies/Social Science Education at Indiana University, which is directed by John J. Patrick. ERIC/ChESS develops and disseminates ideas and information in the social studies and social sciences part of the ERIC database, the world's largest database on education. The final section of Chapter 7 includes more information about ERIC, including directions about how to obtain materials in the ERIC database.

Information about the services and products of ERIC/ChESS can be obtained by contacting John J. Patrick, Director of the ERIC Clearinghouse for Social Studies/Social Science Education; Indiana University; 2805 East Tenth Street; Bloomington, Indiana 47408; (812) 855-3838; FAX (812) 855-7901.

Acknowledgments

Howard Langer of the ADL deserves credit for originating and sustaining this project. He also provided expert direction in the editorial development of this book. It has been productive and pleasant to work with him.

Several secondary school teachers contributed to the conceptualization and development of this volume during a summer seminar on the Bill of Rights at Indiana University. The intellectual stimulation and advice about teaching provided by these colleagues directly and decisively influenced the contents of *How to Teach the Bill of Rights*. Thus, appreciation is extended to Mary Anthrop, Catherine Byers, Frederick Clark, Gretchen Colbert, Nelson Dowell, Kay Harper, Stanley Harris, Rosemarie Kuntz, Gerald Long, Karl Schneider, Carl Siler, Clarissa Snapp, and Beth Steinert.

From the Anti-Defamation League, we would like to acknowledge the helpful assistance of the following: Steve Freeman, Livia D. Thompson, Jane Coleman, Alan Bayer, Frances Sonnenschein, Anthony Papale, Mel Skriloff, and Janet Reisig.

—J.J.P.

How to Use This Book

This work is directed to secondary school teachers of history, government, and civics. It is designed to fit common educational objectives in secondary school curriculum guides, which call for teaching and learning about the United States Constitution and Bill of Rights. Furthermore, it encourages careful reading, analysis, and classroom discussion of primary documents and legal case studies on Bill of Rights issues in American history and our contemporary society.

The central paradoxes of our American constitutional democracy are highlighted: how to have liberty with order and majority rule with minority rights. The Bill of Rights issues raised by these contrapuntal ideas have permeated the history of the United States, and the authoritative responses to them in the federal courts have defined our contemporary constitutional democracy.

Three interrelated civic values are also emphasized throughout this volume: limited government, the rule of law, and civil liberties. These values are exemplified in the U.S. Constitution, especially in the federal Bill of Rights, and they have guided us in our responses to issues of liberty and order and majorities and minorities.

Chapters 1-2 of this volume introduce the contents and meaning of the federal Bill of Rights and provide a rationale and guidelines for teaching about constitutional rights and liberties. Chapters 3-6 include background knowledge and insights about the making of the Bill of Rights, key civic values in the Bill of Rights, the role of the Supreme Court in protecting constitutional rights, and Bill of Rights issues in five landmark cases of the Supreme Court. The ideas and facts in Chapters 3-6 pertain directly to the Bill of Rights topics and issues that should be highlighted in the social studies curricula of secondary schools.

Teachers should draw upon the chapters of this volume to develop lesson plans and learning activities for their secondary school courses in history, civics, and government. Teachers will also be able to use the substance of Chapters 3-6 in their implementation of twelve lesson plans for secondary school students, which are also included in these chapters.

The twelve lessons in this volume can easily be infused into standard secondary school courses. They deal with the making of the federal Bill of Rights, the core civic values and major provisions in the Bill of Rights, the evolution of constitutional rights in American history, and contemporary Bill of Rights issues in the lives of citizens. The commentaries preceding the lessons treat key ideas that should be emphasized in teaching the lessons to secondary school students.

The lessons in this volume are presented as a few examples of potentially effective classroom procedures in teaching and learning the Bill of Rights. They are based on primary documents and case studies, and emphasize classroom discussion strategies. Many activities include special source materials for student distribution. In each case, they are keyed to specific lessons in the book. All student materials will have the following border design:

There are many other sources of excellent instructional materials for teachers, which are available from commercial publishers and non-profit educational agencies. Chapter 7 of this volume is a guide to resources for teachers on the Bill of Rights.

This chapter includes a select annotated bibliography of various kinds of teaching and learning materials including video programs, poster sets, case study books, mock trial simulations, and handbooks with various types of lesson plans and teaching strategies.

The Appendices in this volume include the complete text of the U.S. Constitution and an elaborate annotated Table and Index of Supreme Court Cases mentioned or discussed in Chapters 1-7. These Appendices can be used by teachers and students as handy sources of information about Bill of Rights topics and issues.

Each part of this volume is designed to highlight important ideas and facts that should be incorporated into secondary school courses in history, civics, and government. Teaching strategies and lesson ideas are included as examples of how to convey core knowledge on the Bill of Rights. The purposes of this volume will be served if its contents and processes of teaching and learning contribute to improved education about one of the core documents in the civic heritage of the United States, the federal Bill of Rights.

CHAPTER 1

What Is the Bill of Rights?

"[A] Bill of Rights is what the people are entitled to against every government on earth, general or particular [that is, Federal or State], and what no just government should refuse, or rest on inference," wrote Thomas Jefferson to James Madison on December 20, 1787.

Jefferson was in Paris, serving as the Minister to France from the United States, when he received a copy of the Constitution drafted at the Federal Convention in Philadelphia during the summer of 1787 and found that it lacked a bill of rights. Jefferson generally approved the new Constitution and reported in detail to Madison the many features of the proposed federal government that satisfied him. Then Jefferson declared in his December 20, 1787 letter to Madison that he did not like "the omission of a bill of rights providing clearly and without the aid of sophisms for freedom of religion, freedom of the press, protection against standing armies. . . and trial by jury in all matters of fact triable by the laws of the land."

A bill of rights is a statement of civil liberties and rights which a government may not take away from the people who live under the government's authority. A bill of rights sets legal limits upon the power of government to prevent public officials from denying liberties and rights to individuals, which they possess on the basis of their membership in a civil society.

Thomas Jefferson was concerned that the strong powers of government in the United States Constitution could be used to destroy inherent civil liberties and rights of the people. He noted with pleasure that the Constitution of 1787 included means to limit the power of government, such as its separation of powers among three branches of government—legislative, executive, and judicial—to prevent any person or group from exercising power tyranically. However, Jefferson strongly believed that additional guarantees of individual freedoms and rights were needed. He therefore demanded a bill of rights to protect certain liberties of the people, such as freedom to express ideas in public, against infringement by the government. Many Americans agreed with Jefferson, and they supported ratification of the Constitution of 1787 only on the condition that a bill of rights would be added to it.

James Madison took up this cause at the First Federal Congress in 1789. As a member of the Virginia delegation to the House of Representatives, Madison proposed several amendments to the Constitution to place certain liberties and rights of individuals beyond the reach of the government. The Congress approved twelve of these constitutional changes and sent them to the state governments for ratification. In 1791 ten of these amendments were approved by the states and added to the Constitution. These ten amendments are known as the Bill of Rights.

Contents of the Federal Bill of Rights

Amendments I-X, the Bill of Rights, state the civil liberties that the federal government may not take away from an individual. What rights and liberties are included in the first ten amendments to the Constitution of the United States?

Amendment I protects freedom of thought, belief, and expression. Amendment I,

for example, says that the Congress of the United States of America is forbidden to pass any law depriving individuals of certain fundamental civil liberties: religious freedom, the freedom of speech and the press, and the right of the people to gather together peacefully and petition the government to satisfy complaints they have against public policies and officials.

Amendment II protects the right of the state governments and the people to maintain militia or armed companies to guard against threats to their social order, safety, and security; and in connection with that state right the federal government may not take away the right of the people to have and use weapons.

Amendment III forbids the government during times of peace to house soldiers in a private dwelling without the consent of the owner. In a time of war the government may use private dwellings to quarter troops, if this is done lawfully.

Amendment IV protects individuals against unreasonable and unwarranted searches and seizures of their property. It establishes conditions for the lawful issuing and use of search warrants by government officials to protect the right of individuals to security "in their persons, houses, papers, and effects." There must be a "probable cause" for issuing a warrant to authorize a search or arrest; and the place to be searched, the objects sought, and the person to be arrested must be precisely described.

Amendment V states certain legal and procedural rights of individuals. For example, the government MAY NOT act against an individual in the following ways:

- Hold an individual to answer for a serious crime unless the prosecution presents appropriate evidence to a grand jury that indicates the likely guilt of the individual.
- Try an individual more than once for the same offense.
- Force an individual to act as witness against herself or himself in a criminal case.
- Deprive an individual of life, liberty or property without due process of law (fair and proper legal proceedings).
- Deprive an individual of her/his private property for public use without compensating the person fairly.

Amendment VI guarantees persons suspected or accused of a crime certain protections against the power of government. This amendment provides these rights to individuals:

- A speedy public trial before an unbiased jury picked from the state and community in which the crime was committed.
- Information about what the individual has been accused of and why the accusation has been made.
- A meeting with witnesses offering testimony against the individual.
- Means of obtaining favorable witnesses.
- Help from a lawyer.

Amendment VII provides for the right of a trial by jury in civil cases (common law suits or cases that do not involve a criminal action) where the value of the item(s) or the demanded settlement involved in the controversy exceeds twenty dollars.

Amendment VIII protects individuals against punishments that are too harsh, fines that are too high, and bail (the amount of money required to secure a person's

liberty from legal custody) that is too high.

Amendment IX says that the rights guaranteed in the Constitution are not the only rights that individuals may have. Individuals retain other rights, not mentioned in the Constitution, that the government may not take away.

Amendment X says that the state governments and the people of the United States retain the powers the Constitution does not grant to the United States government or prohibit to the state governments.

Subsequent Amendments on Civil Liberties and Rights

Constitutional amendments passed since the 1791 ratification of the Bill of Rights that pertain to civil liberties and rights of individuals are *Amendments XIII, XIV, XV, XIX, XXIV, and XXVI.*

Amendments XIII, XIV, and XV were passed after the Civil War to protect the rights and define the legal position of persons who had been slaves.

Amendment XIII, ratified in 1865, abolished slavery.

Amendment XIV, added to the Constitution in 1868, defined citizenship so that state governments could not deny former slaves their rights and privileges as citizens. This amendment says that all persons born in the United States are citizens, as are all individuals who are naturalized (foreign-born persons who become citizens through a legal process defined by Congress). According to Amendment XIV, all citizens (natural born and naturalized) have the same legal rights and privileges. This amendment forbids state governments from making and enforcing laws that would deprive any individual of life, liberty, or property "without due process of law;" it also says that a state government may not deny to any person under its authority "the equal protection of the laws."

Amendment XV, adopted in 1870, barred the federal and state governments from denying any citizen the right to vote on the basis of race, color, or previous condition of being a slave.

Amendments XIX, XXIV, and *XXVI* extended and protected voting rights of certain individuals.

Amendment XIX, ratified in 1920, protected the voting rights of women.

Amendment XXIV, adopted in 1964, prohibited state governments from requiring people to pay a tax to qualify to vote, thereby extending the right to vote to people who could not afford to pay a poll tax.

Amendment XXVI, added to the Constitution in 1971, lowered the minimum voting age to eighteen.

Each of these amendments (XIII, XIV, XV, XIX, XXIV, and XXVI) includes a section granting Congress power to enforce the provisions of the amendment through "appropriate legislation."

Rights in Articles I, III, and VI of the Constitution

The United States Constitution includes other protections of individual rights that are not in the Bill of Rights or subsequent amendments. For example, *Article I, Section 9* protects the privilege of the writ of habeas corpus. A writ of habeas corpus requires officials to bring a person whom they have arrested and held in custody before

a judge in a court of law. The officials who are holding the prisoner must convince the judge that there are lawful reasons for holding the person. If the judge finds their reasons for holding the prisoner unlawful, then the court frees the suspect. Thus, the writ of habeas corpus protects individuals against government officials who might want to jail them because they belong to unpopular groups or express criticisms of the government.

Article I, Section 9 also prohibits enactment of bills of attainder and ex post facto laws. A bill of attainder is a law that punishes individuals without a trial or fair hearing in a court of law. An ex post facto law makes an act a crime after it was committed.

Article I, Section 10 prohibits state governments from enacting bills of attainder, ex post facto laws, and laws that interfere with otherwise valid contracts.

Article III, Section 2 provides individuals accused of a crime the right to trial by jury.

Article III, Section 3 protects individuals against arbitrary accusations of treason and establishes rigorous standards for convicting a person of treason.

Article VI, Clause 3 says that there may not be any religious requirements for holding a position in the government.

Nationalization of the Bill of Rights

The framers of the first ten amendments to the U.S. Constitution intended to limit only the powers of the national government, not the state governments. Amendment I, for example, says that Congress may not take away the individual's rights to freedom of religion, speech, press, and so forth.

During the twentieth century, however, the Supreme Court has interpreted the "due process" clause of Amendment XIV to require state and local governments to comply with most of the provisions of the Bill of Rights. Therefore, state and local governments are now prohibited from encroaching on most of the civil liberties and rights found in the U.S. Constitution.

Under provisions of Amendment XIV, the federal government has been empowered to act on behalf of individuals against state and local governments, or persons who would try to abridge their constitutional rights or liberties. Thus, individuals and minority groups have been able to appeal to the federal government for assistance against state and local government actions that threaten rights guaranteed in the United States Constitution. (See Chapter 5 for a detailed discussion of the application of provisions of the federal Bill of Rights to the states.)

The Bill of Rights: Amendments I-X of the Constitution

(Ratified and Effective as of December 15, 1791)

[Amendment I]

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

[Amendment II]

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

[Amendment III]

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

[Amendment IV]

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

[Amendment V]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use without just compensation.

[Amendment VI]

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed; which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the assistance of counsel for his defence.

[Amendment VII]

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall

be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

[Amendment VIII]

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

[Amendment IX]

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

[Amendment X]

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Constitutional Amendments Subsequent to the Bill of Rights that Pertain to Civil Liberties and Rights

[Amendment XIII, Ratified December 6, 1865]

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction. . . .

[Amendment XIV, Ratified July 9, 1868]

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. . . .

[Amendment XV, Ratified February 3, 1870]

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude. . . .

[Amendment XIX, Ratified August 18, 1920]

The rights of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex. . . .

[Amendment XXIV, Ratified January 23, 1964]

Section 1. The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax. . . .

[Amendment XXVI, Ratified July 1, 1971]

Section 1. The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age. . . .

Rights of Individuals in Articles I, III, and VI of the United States Constitution

Article I, Section 9

. . .The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

No Bill of Attainder or ex post facto Law shall be passed. . . .

Article I, Section 10

. . .No State shall. . .pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility. . . .

Article III, Section 2

. . .The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed, but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Article III, Section 3

Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

Article VI

. . .[N]o religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

CHAPTER 2

Why Teach the Bill of Rights?

Judge Learned Hand expressed an insight about constitutional rights that should forever guide the work of civic educators. He said, "Liberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court can save it; no constitution, no law, no court can even do much to help it" (*The Spirit of Liberty* 1960, p. 190).

Constitutional rights and liberties are at risk among people who neither know nor value them, because they are not self-enforcing. Rather, preservation and enforcement of the Bill of Rights depend upon the civic education of each successive generation of Americans. These rights will prevail in the society only if they are embedded in the intellects and spirits of a significant number of people, who will publicly speak and act to sustain them.

Civic educators face the critical cyclical challenge of generating and renewing reasoned commitment to the Bill of Rights among each generation of Americans. The great importance of this challenge warrants great emphasis on the Bill of Rights in the curricula of schools. Is education about the Bill of Rights a high priority in elementary and secondary schools of the United States? Do American students graduate from high school with reasoned commitment to the civil liberties and rights of their constitutional democracy? Do they know enough about their legacy of liberty to maintain it, and perhaps improve upon it?

The Bill of Rights in Elementary and Secondary Schools

The Bill of Rights appears to have a prominent place in the curricula of schools in the United States. Teaching and learning about constitutional rights are emphasized in goals and rationales of social studies textbooks and curriculum guides. The following statements from three sources—the *History-Social Science Framework for California Public Schools*, the *Essential Goals and Objectives for Social Studies Education in Michigan*, and the AFT's *Education for Democracy: Guidelines for Strengthening the Teaching of Democratic Values*—are typical examples of educational goals about constitutional rights:

- "This framework supports the frequent study and frequent discussion of the fundamental principles embodied in the United States Constitution and the Bill of Rights" (California State Board of Education 1988, p. 6).
- [Students should know] "rights and liberties guaranteed in the United States Constitution" (Michigan State Board of Education 1987, p. 20).
- "[C]itizens must know. . .the sources, the meanings, and the implications of the Declaration of Independence, the Constitution, the Federalist Papers, and the Bill of Rights" (Education for Democracy Project of the American Federation of Teachers 1987, p. 15).

In line with the preceding examples of educational goals, most Americans have studied the Bill of Rights in school at least four times: (1) in a fifth-grade American history course, (2) in a junior high or middle school American history course, (3) in a high school course in United States history, and (4) in a high school government

or civics course. In addition, a growing number of students learn about Bill of Rights principles and issues through special units or elective courses in law-related education. These formal courses of study in history, civics, government, and law-related education expose students to ideas in the Bill of Rights, the document's origin and development, and its relevance to citizenship and government in the United States.

Despite these ample opportunities for learning about the Bill of Rights, many Americans in the past and present have failed to acquire or retain important knowledge and attitudes about their constitutional rights and liberties. Historian Michael Kammen (1986, pp. 336-386) has documented serious deficiencies of American adolescents and adults in knowledge and attitudes about constitutional rights from the 1940s through the mid-1980s, which he describes as a "persistent pattern of ignorance" (p. 343). According to Kammen, Americans tend to be very proud of their heritage of civil liberties and rights, but this reverence is "more than offset by the reality of ignorance" (p. 3). Kammen's findings are corroborated by nationwide surveys and assessments conducted in recognition of the bicentennial of the United States Constitution (Hearst Report 1987; Quigley et al. 1987; Ravitch and Finn 1987).

Deficiencies in Knowledge and Attitudes about Rights

There are four major categories of deficiencies in the learning of Americans about the Bill of Rights:

- Ignorance of the substance and meaning of civil liberties and rights in the Constitution.
- Civic intolerance expressed in reluctance or refusal to apply constitutional liberties and rights to unpopular individuals or minority groups.
- Misunderstanding of the federal judiciary's role in protecting the constitutional rights of individuals.
- Inability to analyze, evaluate, and articulate well-reasoned positions on Bill of Rights issues.

Widespread Ignorance of the Bill of Rights. A 1987 survey by the Hearst Corporation found that a majority of American adults did not know that the Bill of Rights is "the first 10 amendments to the original Constitution" (p. 13). This finding is consistent with surveys in the 1940s and 1950s, which revealed that most Americans could not make a correct statement about any part of their Bill of Rights (Kammen 1986, pp. 340-343).

Different and more positive findings (in part) were reported by a 1987 study of high school students: most of them did know that "the Bill of Rights is the first ten amendments to the Constitution and that its purpose is to list and guarantee individual rights" (Quigley et al. 1987, p. 3). However, the students in this sample were misinformed about specific constitutional rights and ignorant of the meaning, history, and application of key concepts, such as due process of law, freedom of expression, and freedom of religion. This lack of knowledge among a national sample of high school students was consistent with recent findings about the ignorance of constitutional rights among adults (Hearst Report 1987) and other samples of adolescents (National Assessment of Educational Progress 1990; Ravitch and Finn 1987).

One notable exception to the prevailing ignorance of constitutional rights is the category of rights of an accused person, which most adolescents and adults appear

to know quite well. Perhaps this reflects their attentiveness to popular prime-time television dramas more than effective teaching and learning in school (Hearst Report 1987, pp. 29-31; National Assessment of Educational Progress 1990, p. 65).

The most disheartening finding reported in the dismal literature on surveys of knowledge about constitutional rights is Kammen's report (1986, p. 385) that "on the basis of surveys made in 1983-84 of high school seniors' perceptions of the Bill of Rights, authorities found their understanding of it to be 'very, very inadequate. The most startling and depressing finding in our polls is that standard civics or government courses don't increase students' sense of the Bill of Rights.' "

Reluctance or Refusal to Extend Constitutional Rights to Certain Unpopular Individuals or Minority Groups. Public attitudes about constitutional rights are generally positive. If most citizens do not know very much about their Bill of Rights, they certainly revere it (Kammen 1986, pp. 23-24). This reverence, however, has not always been linked with civic tolerance for the rights of unpopular persons or minorities. Numerous studies from the 1950s through the 1980s have confirmed this unfortunate finding: Public support for certain liberties and rights tends to decline markedly when they are applied to cases involving unpopular minority groups or persons (Elam 1984; McCloskey and Brill 1983; Patrick 1977).

The Purdue Youth Opinion Polls of the 1950s found that a large proportion of American high school students expressed authoritarian attitudes toward the Bill of Rights: they tended to oppose application of certain civil rights and liberties to black people, Communists, atheists, and other minority groups or individuals they did not like (Remmers and Franklin 1963, pp. 61-72).

Adolescents of the 1980s were given the same statements about the Bill of Rights used in the 1950s Purdue polls. An even greater proportion of these 1980s teen-agers displayed authoritarian attitudes about certain constitutional rights than did the 1950s students. For example, a larger percentage of the 1980s students were willing to allow a police search without a warrant, to deny legal counsel to criminals, and to accept restrictions on freedom of expression of unorthodox religious ideas (Elam 1984).

It seems that many Americans lack understanding of a central concept of constitutional democracy: majority rule with minority rights. In a democracy the majority rules; but if the blessings of liberty are to be enjoyed fully by all members of the society, then the rights of minorities must be protected against the possibility of tyranny, including tyranny of the majority. Thus, the United States Constitution sets limits upon the power of the majority, acting through its representatives in the government, to oppress individuals and minority groups. The Bill of Rights is a set of constitutional limitations upon the power of majorities to deprive minorities of civil liberties and rights.

Supreme Court Justice Robert Jackson explained how the Bill of Rights protects minorities against tyranny of the majority: "The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote, they depend on the outcome of no elections" (*West Virginia State Board of Education v. Barnette*, 1943).

The timeless truth of Justice Jackson's eloquent statement should be in the core of education for citizenship in our constitutional democracy. Students must learn

more effectively than in the past that the Bill of Rights bars oppression of the few over the many and of the many over the few; that it is supposed to secure the liberties of individuals against tyranny by the majority, and against tyranny by a minority.

Misconceptions about Protection of Constitutional Rights by the Federal Judiciary. High school students and adults tend to misunderstand the role of federal judges in dealing with disputes about the meaning and application of constitutional rights in legal cases. In a 1987 study of high school students (Quigley et al. 1987, p. 5), most respondents revealed faulty conceptions about judicial review and an independent judiciary as bulwarks of constitutional rights against threats of tyranny, whether attempted by majorities or minorities, populist demagogues or elitist despots. Most of these students were unaware of the potential conflict between judicial review and majority rule, which may be occasioned by the Supreme Court's responsibility in particular cases for upholding the higher law of the Constitution against the tide of popular opinion.

Adolescents' misconceptions of the federal judiciary's responsibility for constitutional rights seem to be shared by more than half of the adult population of the United States (Hearst Report 1987, pp. 23-26). Kammen (1986, pp. 357-380) documents the long-standing public ambivalence to and misunderstanding of the Supreme Court's role in protecting constitutional rights of individuals against either the momentary or persistent will of antagonistic majorities.

It appears that improved teaching and learning in schools is needed about the federal judiciary's role in defining and protecting the constitutional rights of Americans and in maintaining constitutional limits on the exercise of power by the peoples' representatives in the legislative and executive branches of government. The Bill of Rights could be at risk in a society filled with individuals who neither know nor care about the relationships of judicial review and an independent judiciary to the protection of constitutional liberties and rights. The Bill of Rights is not self-enforcing and requires both a supportive public and effective machinery of government to implement it throughout the society.

Inability to Engage in High-level Thought and Discussion of Bill of Rights Issues. Most high school students seem to lack the ability needed to define, analyze, evaluate, and articulate positions on Bill of Rights issues in history and current events. A small minority of older adolescents appear to demonstrate competence in higher level cognitive operations associated with civic learning, even though research in cognitive development has documented the capacity of most 17-and 18-year-olds to engage in higher level thought (Newmann 1988). Only six percent of the twelfth-grade students in the 1990 national assessment of learning in civics achieved the highest level of civic proficiency as defined by the National Assessment of Educational Progress (pp. 27-40).

Lack of knowledge is an obvious obstacle to defensible deliberation, discourse, and decision making about constitutional issues. If students cannot recognize and comprehend their rights in the United States Constitution, then they certainly will not be able to cogently reflect upon them. In their report on the 1986 national assessment of knowledge in history, Ravitch and Finn conclude: "[M]any of the most profound issues of contemporary society. . . have their origins and their defining events in the evolving drama of the Constitution. Yet our youngsters do not know enough about that drama, either in general or in specific terms, to reflect on or think critically about its meaning" (1987, p. 58).

Improvement of Education on the Bill of Rights

Deficiencies in learning about the Bill of Rights can be remedied by teachers who care deeply about preservation and enhancement of the American civic heritage. There are four obvious keys to improvement of teaching and learning about the Bill of Rights:

- Systematic and detailed coverage of Bill of Rights topics and issues in standard school courses in history, government/civics, and law-related education.
- Use of primary documents associated with controversies and decisions about Bill of Rights issues.
- Analysis and discussion of case studies and decisions about Bill of Rights issues.
- Examination and discussion of Bill of Rights issues in an open classroom climate.

Systematic and Detailed Coverage of the Subject. Unless they carefully and substantially study Bill of Rights topics and issues, students will not learn them. This simple statement of truth is too often ignored in social studies textbooks and classrooms. The standard textbooks certainly *mention* ideas, issues, and legal decisions associated with the Bill of Rights, but the *mere mentioning* of ideas and facts is not sufficient to achieve effective teaching and learning of them. Rather, the ideas in the Bill of Rights, such as freedom of speech and press, freedom of religion, due process of law, and so forth, must be woven deeply into the fabric of courses in the social studies at all levels of schooling. For example, Bill of Rights topics and issues must permeate secondary school courses in American history and government. Teachers must introduce these ideas and controversies about them in the opening sections of a course and then apply these core concepts to various topics, cases, and issues throughout the rest of the course of study.

Support for more extensive and detailed study of subject matter on the Bill of Rights is provided by the 1990 National Assessment of Educational Progress (p. 77): "Across the grades, there appears to be a positive relationship between students' average civics proficiency and the amount and frequency of instruction they received in social studies, civics, or American government." Furthermore, this study indicates a positive relationship between the amount of homework assigned and completed and higher levels of proficiency in civics.

Use of Primary Documents. Students are more likely to achieve higher levels of cognition about Bill of Rights topics and issues if they are taught to locate and use evidence in primary documents to answer questions and participate in classroom discussions. Close reading and analysis of primary sources develop skills in interpretive and critical reading and thinking. Application of data derived from this kind of inquiry to articulation of positions in essays and classroom discussions develops essential skills in communication.

By using primary sources in the classroom, students participate in historical inquiry. Through this cognitive process, they learn to challenge answers and marshal evidence to support or reject hypotheses. Thus, the classroom may become a lively forum for the application and development of cognitive process skills in reasoning and discourse.

What primary documents on Bill of Rights topics and issues belong in every secondary school history, government, or civics course? The core documents of the founding period in United States history certainly are the primary texts for study of civil

liberties and rights: the Declaration of Independence (1776), the Virginia Declaration of Rights (1776), the Northwest Ordinance (1787), the Constitution of the United States of America (1787), letters on constitutional rights and liberties exchanged between Jefferson and Madison (December 20, 1787—Jefferson to Madison and October 17, 1788—Madison to Jefferson), selected *Federalist Papers* and Anti-Federalist essays (1787-1788), and Madison's speech to Congress on "the great rights of mankind" (June 8, 1789).

In addition, students should examine excerpts from majority and dissenting opinions in landmark decisions of the Supreme Court, such as *Plessy v. Ferguson* (1896), *Brown v. Board of Education of Topeka* (1954), *Betts v. Brady* (1942), *Gideon v. Wainwright* (1963), and *Roe v. Wade* (1973). (These cases are included in an annotated list of key cases at the end of this volume: Table and Index of Supreme Court Cases.) Finally, students should study primary sources associated with political controversies about rights and freedoms, such as events and issues associated with the Sedition Act of 1798, the Espionage Act of 1917, Senator Joseph McCarthy's investigations of "un-American activities" during the 1950s, and freedom of the press during the Vietnam War in the 1960s and 1970s.

Use of Case Studies about Bill of Rights Issues. Case studies provide examples of Bill of Rights precedents and persistent issues that are vivid, dramatic, and instructive. Students tend to respond positively to lessons involving cases on constitutional issues. The case study method of teaching has been used successfully in various social studies curriculum projects from the 1960s through the 1980s (Oliver and Shaver 1966; Patrick and Remy 1985; Starr 1978). Many projects in law-related education have emphasized case studies in the classroom and have documented the instructional effectiveness of this strategy (Rodriguez 1989; Turner and Parisi 1984).

Successful use of case studies on constitutional issues involves the following procedures: (1) a review of background information to set a context for analysis of the issue and decision in the case; (2) statement and clarification of the question(s) and issue(s) in the case; and (3) examination and appraisal of alternative responses to the question(s) and issue(s), which include majority and dissenting opinions in the case.

Landmark cases in development of constitutional rights should be emphasized in the curriculum. For example, if the objective of instruction is to teach about the development in the twentieth century of freedom of speech and press, then the following Supreme Court cases, at least, should be examined and discussed in the classroom:

- *Shenck v. United States* (1919).
- *Abrams v. United States* (1919)—with emphasis on the dissents by Justice Brandeis and Justice Holmes.
- *Gitlow v. New York* (1925).
- *Near v. Minnesota* (1931).
- *DeJonge v. Oregon* (1937).
- *Dennis v. United States* (1951).
- *New York Times Company v. Sullivan* (1964).
- *Tinker v. Des Moines School District* (1969).
- *Brandenburg v. Ohio* (1969).
- *New York Times Company v. United States* (1971).

• *Texas v. Johnson* (1989).

The cases in the preceding list are included in an annotated listing of very important decisions of the Supreme Court—Table and Index of Supreme Court Cases—which appears at the end of this volume.

Examination and Discussion of Bill of Rights Issues in an Open Classroom Climate. An open classroom climate is required for successful use of case studies to teach Bill of Rights issues. In an open classroom climate, students feel free and secure to express and examine ideas, even if they seem to be unconventional or unpopular. Furthermore, teachers in an open classroom regularly emphasize participation of students in discussions of controversial topics.

Various studies of learning through classroom discussions have indicated that students in open classroom climates tend to develop positive attitudes about Bill of Rights principles and values and high-level skills in cognition and communication (Leming 1985, pp. 162-163). These attitudes and skills, of course, are essentials of responsible citizenship in a constitutional democracy.

Active civic learning in an open classroom climate may also be associated with greater achievement of knowledge. Relatively few respondents in the recent national assessment in civics "reported that they had participated many times" in such classroom activities as mock trials, simulated congressional hearings, or open classroom discussion of constitutional issues. However, those who had done so (12 percent) "tended to perform better in the assessment than their peers who had occasionally or never participated in these activities" (National Assessment of Educational Progress 1990, pp. 83-85).

The obvious worth of active learning in open classroom climates has led some civic educators to an extreme emphasis on processes in teaching and a consequent neglect of core content that all students should learn, such as Bill of Rights topics and issues. However, research on teaching and learning appears to reject the extreme positions about the primacy in civic education of either process or content. Sound education on the Bill of Rights should involve continuous and systematic blending of important subject matter with warranted means for teaching and learning it, such as open classroom discussions of issues in case studies (Newmann 1988).

A Concluding Note on the Bill of Rights in the Curriculum

Thomas Jefferson and James Madison agreed with many other founders of the United States about the importance of civic education and its relationship to liberty. They recognized, as Judge Learned Hand did in the middle of the twentieth century, that a Bill of Rights could be no better than the people it was created to protect against abuses of their rights by despots.

Jefferson wrote to Madison (December 20, 1787): "Above all things I hope the education of the common people will be attended to; convinced that on their good sense we may rely with the most security for the preservation of a due degree of liberty."

James Madison, too, affirmed his belief in civic education as the foundation for civil liberty. In an August 4, 1822 letter to William T. Barry, Madison wrote: "A popular Government, without popular information or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives . . . . What spectacle can be more edifying or

more seasonable, than that of Liberty & Learning, each leaning on the other for their mutual & surest support?"

Madison and Jefferson knew that their Constitution and Bill of Rights could be no stronger than the linkages of liberty and learning in the minds and hearts of the people. Teachers have a primary responsibility to renew and strengthen these linkages for liberty, the critical connections of civil liberty and common learning in the curricula of schools.

CHAPTER 3

Origin and Creation of the Bill of Rights

"There is no Declaration of Rights," wrote George Mason on the back of the printed report of the Committee of Style. The Federal Convention of Philadelphia was coming to an end after nearly four months of intense work, and Mason, a leading delegate from Virginia, was furious. Only the day before (September 12, 1787), the Convention had hastily rejected his proposal that the new Constitution of the United States should be "prefaced with a Bill of Rights."

Mason continued to record his "Objections to this Constitution of Government" on the blank pages of his copy of the Committee of Style report. He filled several sheets with criticisms of the new plan for a federal government of the United States.

On September 17, the last day of the Federal Convention, 39 men representing 12 states signed the Constitution. Mason was one of three who refused to sign it (the other two: Edmund Randolph of Virginia and Elbridge Gerry of Massachusetts). Meanwhile, his "Objections" began to circulate, first as a handwritten document and then as a printed pamphlet and newspaper editorial. Mason's essay rallied opponents of the Constitution, the Anti-Federalists, and threatened their Federalist foes throughout the 1787-1788 struggle over ratification of the new frame of government.

George Mason's Campaign for a Federal Bill of Rights

George Mason was a formidable figure in 1787, a desired friend and a feared foe. The primary author of the Virginia Declaration of Rights (1776), Mason had impeccable credentials as an advocate of civil liberties in the new Constitution. The Virginia Declaration of Rights was the first bill of rights made in America, and it served as a model for the federal Bill of Rights (drafted in 1789 and ratified in 1791).

Mason was assisted, if modestly, in his 1776 labor for liberty by the bright twenty-five-year-old James Madison, who wrote in his *Autobiography* that he was "initiated into the political career" through participation in the committee that drafted the Virginia Declaration of Rights. "Being young," Madison wrote, he did not have a leading part in the debate; but he added an important clause about "the free exercise of religion" to the final article of the document. Thus James Madison, the so-called "father of the Constitution" in 1787 and primary author of the federal Bill of Rights in 1789, was in 1776 an eager apprentice to George Mason, the drafter of the Virginia Declaration of Rights.

In the autumn of 1787, Anti-Federalists took up Mason's cry —"There is no Declaration of Rights"—against Madison's Constitution. And they added new arguments against ratification while echoing Mason's views, which are presented in the following excerpt from his famous essay.

Objections to the Constitution of Government Formed by the Convention by George Mason Autumn 1787

There is no Declaration of Rights; and the Laws of the general Government being paramount to the Laws and Constitutions of the several States, the Declaration of Rights in the separate States are no Security. . . .

In the House of Representatives there is not the Substance, but the Shadow only of Representation; which can never produce proper Information in the Legislature, or inspire Confidence in the People: the Laws will therefore be generally made by Men little concern'd in, and unacquainted with their Effects and Consequences.

The Senate have [strong and extensive] Power. . . in Conjunction with the President of the United States; altho' they are not the Representatives of the People, or amenable to them.

[The Senate] with their. . . great Powers. . . will destroy any Balance in the Government, and will enable them to accomplish what Usurpations they please upon the Rights and Libertys of the People.

The Judiciary of the United States is so constructed and extended, as to absorb and destroy the Judiciarys of the several States. . . thereby rendering Law. . . and Justice as unattainable, by a great part of the Community. . . .

By declaring all Treaties supreme Laws of the Land, the Executive and the Senate have in many Cases, an exclusive Power of Legislation, which might have been avoided by. . . requiring the Assent of the House of Representatives, where it cou'd be done with Safety.

By requiring only a Majority to make all commercial and navigation laws, the five Southern States. . . will be ruined. . . . Whereas requiring two thirds of the members present in both Houses wou'd have produced mutual moderation, promoted the general interest, and removed an insuperable Objection to the Adoption of the Government.

Under their own Construction of the general Clause at the End of the enumerated powers [Article I, Section 8, Clause 18: the "Necessary and Proper" clause], the Congress may grant monopolies in Trade and Commerce, constitute new Crimes, inflict unusual and severe punishments, and extend their Power as far as they shall think proper; so that the State Legislatures have no security for the powers now presumed to remain to them; or the People for their Rights.

There is no Declaration of any kind for preserving the Liberty of the Press, the Trial by Jury in civil Causes; nor against the Danger of standing Armys in time of Peace. . . .

This Government will commence in a moderate Aristocracy; it is at present impossible to foresee whether it will, in its Operation, produce a Monarchy, or a corrupt oppressive Aristocracy; it will most probably vibrate some Years between the two, and then terminate in the one or the other.

Most of the "objections" of George Mason and other Anti-Federalists were countered by astute arguments of the Federalists in defense of the Constitution of 1787. But one ringing "objection" would not go away: "There is no Declaration of Rights." This cry haunted the Federalists until they gave in to it and promised that, if the Constitution would be ratified, they would make sure to add a Bill of Rights to it. This trade-off was the key to Federalist victories in the ratifying conventions of several states, such as Massachusetts, South Carolina, New Hampshire, Virginia, New York, and North Carolina.

Lesson 1: George Mason's "Objections"

This lesson involves interpretation and appraisal of ideas in a primary document: *Objections to the Constitution of Government Formed by the Convention*, which was written by George Mason and published in the autumn of 1787.

Objectives. Students are expected to use the contents of a primary document to (1) identify and interpret Mason's criticisms of the Constitution and (2) explain the importance of these criticisms in the ratification debate of 1787-1788.

Procedures. Make copies of the primary document on Mason's "objections" and distribute them to students.

Provide a context for the document by exposing students to information in this chapter about the circumstances surrounding Mason's authorship of it. This can be done by (1) copying and distributing to students the discussion in this chapter about Mason and his "objections" that precedes and follows the document or (2) by drawing upon information in this chapter to tell students why Mason wrote and circulated his "objections" to the Constitution of 1787.

Ask students to carefully read the primary document and prepare answers to the following questions about it. Conduct a class discussion about the questions. Require students to support their answers with evidence from the primary document.

Questions for Students. Use evidence from the document on George Mason's "objections" to respond to these questions.

1. What were five "objections" of George Mason to the Constitution of 1787?
2. Which "objection" was the most important? Explain.
3. Is each statement below related to an "objection" by Mason to the Constitution of 1787? Explain.
   a. Federal laws about commerce may be enacted by a simple majority of the members of Congress.
   b. The members of Congress will make their own interpretations of Article I, Section 8, Clause 18 of the Constitution.
   c. Article VI of the Constitution says that treaties shall be supreme laws of the land.
4. Why is this document an important primary source in the study of the Bill of Rights?

James Madison's Conversion to the Bill of Rights Cause

James Madison sensed immediately that George Mason's "Objections" would cause trouble. In a letter to Thomas Jefferson (October 24, 1787), Madison wrote: "Col. Mason left Philad. in an exceeding ill humor indeed. . . . He returned to Virginia with a fixed disposition to prevent the adoption of the plan [Constitution] if possible. He considers the want of a Bill of Rights as a fatal objection."

Madison was among those at the Federal Convention who voted against George Mason's "last minute" proposal to include a Bill of Rights in the Constitution of 1787. Madison, however, was not opposed to civil liberties and rights for the people of the United States. He had been a champion of religious liberty and other freedoms for individuals in Virginia. And he strongly believed that basic principles of the Constitution of 1787, such as separation of powers, checks and balances, popular election of legislators, and limited grants of power to the federal government, would be sufficient to protect the people's rights and liberties.

Madison's arguments in defense of the Constitution without a bill of rights were as follows:

- There is protection for civil liberties and rights of the people in the bills of rights in the state constitutions.
- The federal government cannot negate the liberties and rights in the state constitutions, because it has not been granted the power to do so; the federal government, for example, has not been granted the power to make laws denying freedom of the press.
- It is not necessary to declare in the Constitution that certain liberties and rights may not be denied, when there is no power granted to deny them.
- If certain rights are listed in a formal declaration, other rights that the people should have may be denied them on the grounds that what is not listed is not protected.
- The Constitution of 1787 as a whole protects the liberties of the people without a declaration of rights, because it separates powers in the federal government, provides for a system of internal checks and balances, and divides power between the federal government and several state governments.
- The Constitution of 1787 provides protections for the most essential rights; for example, Article I, Section 9, protects the privilege of the writ of habeas corpus and prohibits enactment of bills of attainder and ex post facto laws.

As the ratification struggle continued, Madison began to change his mind about adding a bill of rights to the Constitution. He realized that the price of ratification of the new frame of government would be a pledge to add a Bill of Rights to the document. During and after the Virginia ratifying convention, Madison joined other Federalists in making this promise. However, he added this qualification: "As far as his [Mason's] amendments are not objectionable, or unsafe, so far they may be subsequently recommended—not because they are necessary, but because they can produce no possible danger."

So, Madison publicly committed himself to the cause of a bill of rights in the Constitution, but only if its provisions would not change the basic structure of the federal government. Above all he wanted to prevent any reduction in the power of the federal government in its relationships with the several state governments.

After the Constitution was ratified in the summer of 1788, Madison decided to seek election as the Representative to Congress from his district in Virginia. His friend and neighbor, James Monroe, opposed him. Madison won the election by a narrow margin of 336 votes, and only after emphatically stating: "It is my sincere opinion that the Constitution ought to be revised" to guarantee such "essential rights" as "the rights of Conscience in the fullest latitude, the freedom of the press, trials by jury, security against general warrants" and other inherent rights of the people. Even with this pledge, however, Madison noted that he had "never seen in the Constitution. . .those serious dangers which have alarmed many respectable Citizens." It is doubtful that Madison would have made this pledge without the public outcry for a bill of rights stirred by George Mason's ringing criticisms of the Constitution of 1787.

In October of 1788, before his election to the House of Representatives, Madison wrote Thomas Jefferson to explain his conversion to the cause of a Bill of Rights in the Constitution. He emphasized the undeniable fact that had forced his conversion: "[T]hat it [a bill of rights] is anxiously desired by others. [A]nd if properly executed could not be of disservice." He was now determined to "properly execute" a federal Bill of Rights. (See the following edited excerpt from Madison's letter to Jefferson.)

Madison, however, continued to believe that a bill of rights would not be an effective safeguard for the people's liberties unless it were embedded in a well-constructed constitutional government that could enforce it. Otherwise, a bill of rights would be a mere "parchment barrier" to tyranny, not an enforceable instrument for individual rights and liberties. So, he continued to emphasize the fundamental importance of such constitutional principles as separation of powers and checks and balances among the branches of the federal government and the division of powers between the federal and state governments. These means to limited government and the rule of law were of paramount importance in Madison's scheme to secure the liberties of individuals.

Letter from James Madison to Thomas Jefferson October 17, 1788

The States which have adopted the new Constitution are all proceeding to the arrangements for putting it into action in March next. . . .

The little pamphlet herewith inclosed will give you a collective view of the alterations which have been proposed for the new Constitution. . . . It is true. . . that among the advocates for the Constitution there are some who wish for further guards to public liberty and individual rights. As far as these may consist of a constitutional declaration of the most essential rights, it is probable they will be added; though there are many who think such addition unnecessary, and not a few who think it misplaced in such a Constitution. . . .

. . . My own opinion has always been in favor of a bill of rights; provided it be so framed as not to imply powers not meant to be included in the enumeration. At the same time I have never thought the omission a material defect, nor been anxious to supply it even by subsequent amendment, for any other reason than that it is anxiously desired by others. I have favored it because I supposed it might be of use, and if properly executed could not be of disservice. I have not viewed it in an important light [because of the following four reasons]

1. Because I conceive that in a certain degree. . . the rights in question are reserved by the manner in which the federal powers are granted.

2. Because there is great reason to fear that a positive declaration of some of the most essential rights could not be obtained in the requisite latitude. I am sure that the rights of conscience [religious liberty] in particular, if submitted to public definition would be narrowed much more than they are likely ever to be by an assumed power. . . .

3. Because the limited powers of the federal Government and the jealousy of the subordinate [state] Governments, afford a security which has not existed in the case of the State Governments, and exists in no other.

4. Because experience proves the inefficacy of a bill of rights on those occasions when its control is most needed. Repeated violations of these parchment barriers have been committed by overbearing majorities in every State. In Virginia I have seen the bill of rights violated in every instance where it has been opposed to a popular current [the will of the majority of the people]. . . .

. . . .Wherever the real power in a Government lies, there is the danger of oppression. In our Governments the real power lies in the majority of the Community, and the invasion of private rights is *chiefly* to be apprehended, not from acts of Government contrary to the sense of its constituents, but from acts in which the Government is the mere instrument of the major number of the constituents. This is a truth of great importance, but not yet sufficiently attended to. . . .Wherever there is an interest and power to do wrong, wrong will generally be done, and not less readily by a powerful and interested party [constituting a majority of the people] than by a powerful and interested prince. . . .

. . . [T]he efficacy of a bill of rights in controlling abuses of power. . . lies in this: that in a monarchy the latent force of the nation is superior to that of the Sovereign, and a solemn charter of popular rights must have a great effect, as a standard for trying the validity of public acts, and a signal for rousing and uniting the superior force of

the community; whereas in a popular Government, the political and physical power may be considered as vested in the same hands, that is in a majority of the people, and consequently the tyrannical will of the sovereign is not to be controlled by the dread of an appeal to any other force within the community. What use then it may be asked can a bill of rights serve in popular governments? I answer the two following which though less essential than in other Governments, sufficiently recommended the precaution. 1. The political truths declared in that solemn manner acquire by degrees the character of fundamental maxims of free Government, and as they become incorporated with the national sentiment, counteract the impulses of interest and passion. 2. Altho' it be generally true as above stated that the danger of oppression lies in the interested majorities of the people rather than in usurped acts of the Government, yet there may be occasions on which the evil may spring from the latter sources; and on such, a bill of rights will be a good ground for an appeal to the sense of the community. Perhaps too there may be a certain degree of danger, that a succession of artful and ambitious rulers, may by gradual and well-timed advances, finally erect an independent Government on the subversion of liberty. Should this danger exist at all, it is prudent to guard against it, especially when the precaution can do no injury. At the same time I must own that I see no tendency in our governments to danger on that side. . . .

. . .Where the power is in the few it is natural for them to sacrifice the many to their own partialities and corruptions. Where the power, as with us, is in the many not in the few, the danger can not be very great that the few will be thus favored. It is much more to be dreaded that the few will be unnecessarily sacrificed to the many. . . .

Having promised to propose a Bill of Rights during the First Federal Congress, Madison was determined to include in it provisions that fit his views about the purposes and structure of the federal government. On June 8, 1789 he addressed the House of Representatives and proposed several amendments to the Constitution. More than two-thirds of both Houses of Congress eventually agreed to 12 amendments. Article V says that constitutional amendments may be proposed by two-thirds of both Houses of Congress. They cannot be ratified unless three-fourths of the states approve them. Ten of the 12 amendments were ratified by the states as of December 15, 1791. They became part of the Constitution, and are known as the Bill of Rights.

The two amendments not ratified were not directly related to civil liberties or rights. One proposal would have modified apportionment of delegates in the House of Representatives. The second unratified proposal concerned procedures for increasing compensation for members of Congress.

The federal Bill of Rights, advanced by Madison, was compatible with the design of the Constitution of 1787. It proclaimed civil liberties and rights of the people against the power of government, and therefore this Bill of Rights fit Madison's conception of a free and limited government. It did not alter the structure or the enumerated powers of the federal government, which Madison considered necessary for public order and safety.

Lesson 2: Madison's Ideas on a Bill of Rights

This lesson is based on a primary document, James Madison's letter to Thomas Jefferson (October 17, 1788), in which Madison expressed ideas about a federal Bill of Rights.

Objectives. Students are expected to use the contents of a primary document to (1) identify, interpret, and appraise James Madison's ideas on a federal Bill of Rights; (2) examine and appraise Madison's ideas on majority rule and minority rights in a free government; and (3) identify and explain Madison's conversion to the Bill of Rights cause in 1788-1789.

Procedures. Make copies of Madison's letter to Jefferson and distribute them to students.

Provide a context for the document by exposing students to information in this chapter about Madison's conversion from an opponent to an advocate of a federal Bill of Rights.

Ask students to carefully read the primary document and prepare answers to the following questions about it. Conduct a class discussion on these questions.

Questions for Students. Use evidence in the document to support and explain answers to the following questions.

1. What were Madison's reasons for not supporting, at first, a bill of rights in the Constitution of 1787?

2. What benefits, according to Madison, could a bill of rights provide in a popular government?

3. Why did Madison decide to support a Bill of Rights in the Constitution?

4. What was the greatest source of Madison's fears about tyranny in the government of the United States? Select one of the following statements as the correct response to this question. Support and explain your response with evidence from Madison's letter to Jefferson.

   a. The greatest threat to the civil liberties and rights of the people is seizure of power in the government by a small group of aristocrats, who will oppress the majority.

   b. Tyranny by the majority of the people against unpopular individuals or minorities is the most likely danger to civil liberties and rights.

   c. In a government based on the will of the people, there can be no significant or lasting threat to the civil liberties and rights of individuals.

5. Do you agree or disagree with James Madison's ideas about threats to civil liberties and rights in the government of the United States?

6. In 1983, Warren E. Burger, Chief Justice of the United States, wrote: "We have not yet found a better way to preserve freedom than by making the exercise of power subject to the carefully crafted restraints spelled out in the Constitution." Does this statement agree with the ideas of James Madison? Do you agree with this statement by Chief Justice Burger?

A Bill of Rights Chronology, 1787-1791

Main events associated with the origins and development of the federal Bill of Rights are listed below. The list begins with the Federal Convention's rejection of George Mason's proposal for a bill of rights. It concludes with the ratification of Amendments I-X of the United States Constitution.

September 12, 1787: Near the end of the Federal Convention, George Mason, delegate from Virginia, proposed that a bill of rights should be included in the Constitution. This proposal was rejected.

September 13, 1787: George Mason drafted "Objections to the Constitution of Government Formed by the Convention" which later was circulated as a printed pamphlet and newspaper editorial; Mason's primary "objection"— "There is no Declaration of Rights" in the Constitution.

September 17, 1787: Thirty-nine delegates representing 12 states at the Federal Convention signed the completed Constitution of the United States of America; because of his "objections" to the document, George Mason refused to sign it.

September 20, 1787: The Confederation Congress of the United States received the proposed Constitution.

September 28, 1787: Congress voted to send the Constitution to the legislature of each state: Congress asked each state to convene a special ratifying convention, which would either approve or reject the proposed Constitution.

December 7, 1787: Delaware was the first state to ratify the Constitution; the vote was 30-0.

December 12, 1787: Pennsylvania ratified the Constitution by a 46 to 23 vote.

December 18, 1787: New Jersey ratified the Constitution by a 38-0 vote.

January 2, 1788: Georgia was the fourth state to ratify the Constitution; the vote was 26-0.

January 9, 1788: Connecticut ratified the Constitution by a vote of 128-40.

February 6, 1788: Massachusetts ratified the Constitution by a vote of 187-168; constitutional amendments were proposed to protect the rights of persons and powers of the states.

April 28, 1788: Maryland was the seventh state to ratify the Constitution; the vote was 63-11.

May 23, 1788: South Carolina ratified the Constitution by a vote of 149-73; amendments were proposed.

June 21, 1788: New Hampshire was the ninth state to ratify the Constitution; the vote was 57-47; amendments were proposed.

June 25, 1788: Virginia was the tenth state to ratify the Constitution; there were 89 votes for ratification and 79 opposed to it.

June 27, 1788: The Virginia Ratifying Convention proposed amendments to the Constitution; these amendments, including a bill of rights, were advanced initially by Anti-Federalist leaders (for example, George Mason and Patrick Henry); Federalist leaders (James Madison, for example) pledged to add a bill of rights to the Constitution.

July 2, 1788: Cyrus Griffin, the president of Congress, recognized that the

Constitution had been ratified by the requisite nine states; a committee was appointed to prepare for the change in government.

July 26, 1788: New York was the eleventh state to ratify the Constitution; the vote was 30-27; amendments were proposed.

August 2, 1788: North Carolina refused to ratify the Constitution without the addition of a bill of rights.

October 10, 1788: Congress under the Articles of Confederation completed its last day of existence; it was disbanded to make way for a new government under the Constitution of 1787.

June 8, 1789: James Madison, Representative from Virginia, presented proposals about constitutional rights to the House of Representatives; he urged that these proposals should be added to the Constitution.

September 25, 1789: More than two-thirds of both Houses of Congress reacted favorably to most of Madison's proposals about individual rights, and they voted to approve twelve amendments to the Constitution. This was done in response to the state ratifying conventions that had called for additional guarantees for civil liberties and rights in the Constitution.

October 2 , 1789: President George Washington sent twelve proposed constitutional amendments to the states for their approval. According to Article V of the Constitution, three-fourths of the states had to ratify these proposed amendments before they could become part of the Constitution.

November 20, 1789: New Jersey became the first state to ratify ten of the twelve amendments, the Bill of Rights.

November 21, 1789: North Carolina became the twelfth state to ratify the Constitution; the vote was 194-77.

December 19, 1789: Maryland ratified the Bill of Rights.

December 22, 1789: North Carolina ratified the Bill of Rights.

January 19, 1790: South Carolina ratified the Bill of Rights.

January 25, 1790: New Hampshire ratified the Bill of Rights.

January 28, 1790: Delaware ratified the Bill of Rights.

February 27, 1790: New York ratified the Bill of Rights.

March 10, 1790: Pennsylvania ratified the Bill of Rights.

May 29, 1790: Rhode Island ratified the Constitution; the vote was 34-32.

June 11, 1790: Rhode Island ratified the Bill of Rights.

January 10, 1791: Vermont ratified the Constitution.

March 4, 1791: Vermont was admitted to the Union as the fourteenth state.

November 3, 1791: Vermont ratified the Bill of Rights.

December 15, 1791: Virginia ratified the Bill of Rights; these ten amendments became part of the Constitution of the United States of America.

Lesson 3: Using Facts in a Bill of Rights Timetable

This lesson is about chronology, the timetable of events, from September 12, 1787 to December 15, 1791, associated with the origin, development, enactment, and ratification of the federal Bill of Rights.

Objectives. Students are expected to (1) use a timetable of events to identify and interpret facts about the making of the federal Bill of Rights; (2) arrange in chronological order events in the making of the federal Bill of Rights; and (3) make judgments about the relationships among events in a timetable on the making of the federal Bill of Rights.

Procedures. Make copies of the Bill of Rights Chronology in this chapter and distribute them to students.

Ask students to read the timetable on the Bill of Rights and to answer the questions below. Conduct a class discussion on these questions.

Questions for Students. Use information in the timetable about the Bill of Rights to answer the following questions.

1. Which of the events preceding ratification of the Constitution indicate that a significant number of Americans wanted to add a Bill of Rights to it? Arrange and report these events in chronological order. Provide reasons for selection of items for this list.

2. Which of the state ratifying conventions officially recommended amendments to the Constitution to protect civil liberties and rights? List these ratifying conventions in chronological order.

3. Which was the first state to ratify the Bill of Rights? Which was the last state in this timetable to ratify these amendments? How many states had to ratify the Bill of Rights to add them to the Constitution? Explain.

4. Which ten events in this timetable would you select as the most significant or important events in the making of the federal Bill of Rights? List these events in chronological order. Explain your choices.

CHAPTER 4

Civic Values in the Bill of Rights

The Bill of Rights is a means to limited government and the rule of law for the purpose of protecting civil liberties of individuals. Limited government, rule of law, civil liberties—these are three related fundamental values in the civic tradition of the United States of America. What is the meaning of these civic values? How are they related? Where can these values be found in the Bill of Rights? Why are they important to everyone? What beliefs and attitudes do Americans have about them? These questions should be focal points for reflection, discussion, and inquiry in education for citizenship in a constitutional democracy.

Limited Government, the Rule of Law, and Liberty

Limited government means that officials cannot act arbitrarily when they make and enforce public policy. Rather, they are guided and restricted by laws as they carry out the duties of their government offices. For example, the Constitution, the supreme law, grants certain powers to the federal government and specifically denies other powers to the government. Further, powers not granted to the government are assumed to be reserved to the people living under the government.

Provisions of the Bill of Rights are means to limited government, because they restrain the power and actions of public officials. For example, Amendment I prohibits Congress from making laws to take away the freedom of the press, and Amendment IV protects individuals from arbitrary and unwarranted invasions of their privacy by public officials.

The rule of law means that neither government officials nor private citizens are supposed to break the law. Furthermore, persons accused of crime are supposed to be treated equally under the law and accorded due process in all official actions against them. Thus, law governs the actions of all persons in the system, public officials and private individuals, and from highest to lowest ranks in government and society. The Constitution, the supreme law in the United States, and laws made in conformity with it are intended to limit and direct the actions of everyone in the society—those who govern and those who are governed.

Justice Louis Brandeis, who served on the U.S. Supreme Court from 1916-1939, eloquently expressed the values of limited government and the rule of law in his dissenting opinion in *Olmstead v. United States* (1928). Brandeis wrote:

> Decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperilled if it fails to observe the law scrupulously. Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means—to declare that the Government may commit crimes in order to secure the conviction of a private criminal—would bring

terrible retribution. Against that pernicious doctrine the Court should resolutely set its face.

Justice Brandeis explained how limited government and the rule of law provide for an orderly society, and how disregard of these civic values leads to disorder. Liberty is an inevitable casualty of a breakdown of law and order in society. In a state of anarchy, there are neither laws nor law enforcers to protect the liberties and rights of individuals against those who would rapaciously destroy them. The Bill of Rights, for example, is not self-enforcing. If people are to enjoy the civil liberties declared in the Bill of Rights, there must be an effective and respected government to enforce those freedoms fairly throughout the society.

Civil liberties are those freedoms spelled out in the Constitution and enforced by the government acting in line with the supreme law of the Constitution. They provide legal guarantees protecting people and property against arbitrary or unlawful interference by public officials. Civil liberties stated in the Bill of Rights restrain the government from abusing individuals in certain ways.

Earl Warren, who served as Chief Justice of the United States from 1953-1969, wrote about civil liberties provided in the Bill of Rights:

> [These rights] summarize in a striking and effective manner the personal and public liberties which Americans [of the founding era]. . . regarded as their due and as being properly beyond the reach of any government. The men of our First Congress [who enacted the Bill of Rights] knew that whatever form it may assume, government is potentially as dangerous a thing as it is a necessary one. They knew that power must be lodged somewhere to prevent anarchy within and conquest from without, but that this power could be abused to the detriment of their liberties (quoted in Christman, 1959, p. 70).

Thus, former Chief Justice Warren acknowledged civic values that are fundamental to constitutional government and citizenship in the United States: limited government, the rule of law, and civil liberties.

Lesson 4: Civil Liberties in the Constitution

This lesson treats the Bill of Rights and other parts of the Constitution that pertain to rights as instruments of limited government to protect civil liberties of individuals.

Objectives. Students are expected to (1) identify and interpret provisions for civil liberties in the Bill of Rights and other parts of the Constitution and (2) identify and explain examples of constitutional limits on government to protect civil liberties.

Procedures. Introduce to students the ideas of limited government, rule of law, and civil liberties. Draw upon the definitions and examples of these ideas in the opening parts of this chapter. You may want to use the statements by Brandeis and Warren to illuminate the meanings of and relationships among these three fundamentals of constitutional democracy: limited government, rule of law, and civil liberties. This introductory discussion of three basic ideas will set a context for the remainder of this lesson.

Make and distribute to students copies of the set of examples and questions below under the title: *What Does the Constitution Say about Civil Liberties?*

Ask students to answer the questions about the examples in preparation for a class discussion about them. During the discussion, require students to support and explain their answers with references to, and commentary about, specific parts of the Bill of Rights or other sections of the Constitution.

Students should also be asked to use the concepts of limited government, rule of law, and civil liberties to explain each of their answers. By applying these three related ideas to interpretation of the examples in this exercise, students can demonstrate their level of understanding of limited government, rule of law, and civil liberties.

Students will need a copy of the Bill of Rights and other parts of the Constitution that pertain to civil liberties. You may want to copy and hand out to students these parts of the Constitution that appear in Chapter 1: Bill of Rights; Amendments XIII, XIV, XV, XIX, XXIV, XXVI; and Constitutional Rights in Articles I, III, and VI.

Questions for Students. Answer the questions below on 10 items in the following learning activity.

1. Does each item in the 10-item activity agree or disagree with provisions of the U.S. Constitution?

2. Can you identify the parts of the U.S. Constitution that justify your answers to the preceding question?

3. What do your responses to the ten items have to do with these three related ideas: (a) limited government, (b) the rule of law, and (c) civil liberties?

What Does the Constitution Say about Civil Liberties?

Read the following items (1-10). Decide whether or not each item agrees with the contents of the United States Constitution. If so, answer YES to signify that the action is constitutional. If not, answer NO to signify that the action is unconstitutional. Identify the number of the Article and Section or the Amendment in the Constitution that supports your answer. EXPLAIN: What does your answer to each item have to do with *limited government, the rule of law,* and *civil liberties?*

Examine the following parts of the Constitution to find support for your answers to the items below: Article I, Section 9; Article III, Section 2; Article VI, Clause 3; Amendments I-X; Amendments XIII, XIV, XV, XIX, XXIV, XXVI.

1. The President suspended the privilege of the writ of habeas corpus to detain newspaper reporters who had written articles against his policies.

Yes ___ No ___ Relevant Part of the Constitution _____

2. Ms. Brown was denied the right to vote in a presidential election because she refused to pay a poll tax.

Yes ___ No ___ Revelant Part of the Constitution _____

3. A federal judge permitted Jimmy Jones to refuse to testify as a witness against himself in a federal criminal case.

Yes ___ No ___ Relevant Part of the Constitution _____

4. Agents of the Federal Bureau of Investigation were conducting searches of private homes in a community to find evidence of illegal activities. A property owner told the federal officers that they could not enter his place of residence without a search warrant. But a federal agent ignored him, pushed him aside, and said he did not need a warrant to search a person's home. The federal agents entered the building and conducted a search without a warrant.

Yes ___ No ___ Relevant Part of the Constitution _____

5. The election board of her state permitted Jane Smith to be a candidate for election to the U.S. Senate after she provided evidence of active membership in a Christian church.

Yes ___ No ___ Relevant Part of the Constitution _____

6. A group of state legislators from New England, who were opposed to the President, held a peaceful protest demonstration on the sidewalk in front of the White House.

Yes ___ No ___ Relevant Part of the Constitution _____

7. Seven professors at the state university were dismissed from their jobs because they refused an order from the state governor to begin their classes each day with an official state prayer.

Yes ___ No ___ Relevant Part of the Constitution _____

8. Federal government officials arrested Margaret Evans for breaking a law that had been passed three months after Evans committed the action that led to her arrest.

Yes ___ No ___ Relevant Part of the Constitution _____

9. Robert Martin was accused of a crime by the local police and brought to trial. He was too poor to hire a lawyer, so he was tried and convicted in a court of law without the assistance of a lawyer.

Yes ___ No ___ Relevant Part of the Constitution _____

10. Janet Green was denied the right to vote in an election of government officials because she was only sixteen years old.

Yes ___ No ___ Relevant Part of the Constitution _____

★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★

Answers: (1) No—Article I, Section 9; (2) No—Amendment XXIV (3) Yes—Amendment V; (4) No—Amendment IV; (5) No—Article VI and Amendment I; (6) Yes—Amendment I; (7) No—Amendments I and XIV; (8) No—Article I, Section 9; (9) No—Amendments VI and XIV; and (10) Yes—Amendment XXVI.

Legal Limits on Civil Liberties: Views of Black and Brandeis

Individuals in the United States of America often refer to themselves as "free people" and to the U.S.A. as a "free country." The Constitution, and especially the Bill of Rights, says that the government may not take away certain liberties of individuals. Thus, the Constitution helps ensure that those in the minority will enjoy certain freedoms and rights, irrespective of the opinions and intentions of popular majorities acting through their representatives in the federal and state governments.

The Constitution and its Bill of Rights, however, do not permit people to do anything they want to do. The liberties and rights of people are not unlimited. But the boundaries are not always clear and, therefore, Americans hold different views about the legal limits on civil liberties.

Debates about the freedom of speech in United States history exemplify conflicts about the legal latitude and limits of an individual's liberty. Americans tend to express strong support for the idea of free speech, and when they boast about their civil liberties, they usually mean, first of all, the liberty to think and say what they please.

Most of these Americans, however, have not been willing to extend freedom of expression to all persons and under all circumstances. The general belief in freedom of speech has been tempered by the countervailing belief that this freedom should have limits pertaining to the time, place, and manner of speech. For example, most Americans have agreed that individuals do not have freedom under the Constitution to provoke a riot or other violent behavior that would endanger lives and property. In times of national crisis, such as war or rebellion, Americans have tended to support some limits on freedom of expression that seems to critically threaten national security or public safety.

Americans have tried to weigh the individual's right to freedom of speech against the community's need for stability, safety, and security. At issue is the point at which freedom of expression is sufficiently dangerous to the public welfare to constitutionally justify its limitation. Issues about the legal limits on free speech have challenged every generation of Americans and will continue to do so. When and how much should the government limit a person's right to freedom of expression?

The answer of some authorities to this question has been an emphatic affirmation of practically unlimited free speech. Justice Hugo Black, who served on the U.S. Supreme Court from 1937-1971, was an advocate of unfettered free speech. For example, consider this excerpt from his dissent in *Dennis v. United States*, (1951):

> [A] governmental policy of unfettered communication of ideas does entail dangers. To the Founders of this Nation, however, the benefits derived from free expression were worth the risk. They embodied this philosophy in the First Amendment's command that "Congress shall make no law . . . abridging the freedom of speech, or of the press . . ." I have always believed that the First Amendment is the keystone of our government, that the freedoms it guarantees provide the best insurance against destruction of all freedom . . . .
>
> [I] cannot agree that the First Amendment permits us to sustain laws suppressing freedom of speech and press on the basis of Congress' or our own notions of mere "reasonableness." Such a doctrine waters down the First

Amendment so that it amounts to little more than an admonition to Congress. The Amendment as so construed is not likely to protect any but those "safe" or orthodox views which rarely need its protection. . . .

An alternative viewpoint, which also strongly supports freedom of speech, was written by Justice Louis Brandeis (*Whitney v. California*, 1927).

[A]lthough the rights of free speech and assembly are fundamental, they are not in their nature absolute. Their exercise is subject to restriction, if the particular restriction proposed is required to protect the State from destruction or from serious injury, political, economic or moral. . . .

. . .To justify suppression of free speech there must be reasonable ground to fear that serious evil will result if free speech is practiced. . . . There must be reasonable ground to believe that the evil to be prevented is a serious one. . . .

. . .[N]o danger flowing from speech can be deemed clear and present, unless the incidence of the evil apprehended is so imminent that it may befall before there is opportunity for full discussion. If there be time to expose through discussion the falsehoods and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence. Only an emergency can justify repression. Such must be the rule if authority is to be reconciled with freedom. Such, in my opinion, is the command of the Constitution. It is therefore always open to Americans to challenge a law abridging free speech and assembly by showing that there was no emergency justifying it. . . .

Brandeis' position—great latitude for free speech, with particular limits associated with the time, manner, and place of that speech—has been the prevalent viewpoint in the United States during most periods of the twentieth century. This viewpoint, however, poses the continuing and complex challenge of making case-by-case judgments about the delicate balance of liberty and order, about the limits on authority and the limits on freedom that in concert sustain a constitutional democracy.

Lesson 5: Two Views of Free Speech

This lesson focuses on alternative positions about the latitude and limits of free speech in a constitutional democracy.

Objectives. Students are expected to (1) identify and interpret main ideas in two different positions about the latitude and limits of free speech and (2) take a stand in favor of one of two alternative positions on free speech.

Procedures. Raise questions about the meaning of free speech, its latitude and limits under the Constitution of the United States. Use ideas and questions in the preceding section of this chapter, "Legal Limits on Civil Liberties," to guide your discussion. You may find it useful to copy and distribute this section of this chapter to students and have them read it in preparation for this lesson.

Copy and distribute to students the statements on free speech by Justice Black and by Justice Brandeis. Ask students to examine the two statements and to identify the main ideas and supporting reasons in each statement.

Divide the class into two groups. Members of Group I are those who favor Justice Black's position on freedom of speech and oppose the position of Justice Brandeis. Members of Group II have decided that they want to take a stand in favor of Justice Brandeis' position and against Justice Black's position. Arrange the chairs so that the two groups are facing each other across the room. Call on individuals alternatively from each group to articulate their group's position in this discussion.

Conclude the discussion by asking every student to briefly indicate her/his opinions about the two positions. Which position is preferred at this point and why? Ask if anyone has changed her/his views as a result of the discussion.

Lesson 6: Your Constitutional Right to Freedom of Speech

This lesson is about freedom of speech and its limits in a constitutional democracy.

Objectives. Students are expected to (1) interpret the First Amendment guarantee of freedom of speech, (2) identify and explain examples of limits on the government's power to limit freedom of speech, and (3) identify and explain examples of limits on an individual's freedom of speech.

Procedures. Begin by reading to students the First Amendment guarantee of free speech: "Congress shall make no law. . . abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." Remind students that this First Amendment restriction on Congress also may be applied to state and local governments through the "due process" clause of the Fourteenth Amendment.

Discuss with students the issue of limits on freedom of speech in a constitutional democracy. Ask them to provide examples of situations in which their constitutional right to freedom of speech could be limited legitimately. Use this discussion to establish a context for the remainder of the lesson, which involves judgment about a series of hypothetical examples about the latitude and limits of free speech.

Make and distribute to students copies of the series of examples and questions below under the title: *What Are the Limits to Free Speech?* Either in small groups or individually have students read each example and decide if it is a violation of the First Amendment right to freedom of speech or a legitimate limitation on this constitutional right. Require them to explain their decisions.

Conclude the lesson by presenting answers to the questions that are based on constitutional law and asking students to agree or disagree with these answers.

What Are the Limits to Free Speech?

Read the following hypothetical examples and decide whether each one is a legal limitation on free speech, or whether the example is a violation of free speech. Explain your decision in response to each example.

1. An unpopular group, which preaches violence and hatred against people of different races and religious beliefs, has asked the city government for permission to hold a public meeting in a city park to express the ideas of the group. But the city council and mayor decided to deny the permission on the grounds that such a parade would upset many people in the community and perhaps lead to public disorder. Did the city government violate the constitutional right to free speech of members of this group?

2. Police stopped a person from using a "sound truck" (with a loudspeaker) to spread political ideas in a residential neighborhood at three o'clock in the morning. Did the police violate the person's constitutional right to free speech?

3. A person stood on a street corner and made a speech strongly criticizing the President of the United States. He used obscene words to describe the President and said that he is so corrupt that he ought to be convicted of his crimes against the people and executed. An officer of the Federal Bureau of Investigation heard this speech and arrested the man for the crimes of seditious libel and incitement to commit violence against the President. Did the FBI agent violate this person's constitutional right to free speech?

4. A person stood on a street corner and said she hates the United States of America. Then she burned the flag of the United States of America. For this act, she was arrested and sentenced to one month in jail. Was her constitutional right to free speech violated?

5. A teacher in a public school gave several lectures to students that included serious errors about facts in history. Parents complained to the school board, and the teacher was reprimanded and advised to improve the level of her work. She ignored the school board and emphatically repeated the errors in lectures and classroom discussions. As a result, she was dismissed from her job. Did the school board violate the teacher's right to free speech?

Answers to Hypothetical Examples on Free Speech

1. This IS a violation of the group's First Amendment right to free speech. The federal courts have consistently upheld the right of unpopular or obnoxious groups to hold rallies, marches, and public meetings as long as they are non-violent. A person has great latitude to say foolish, incorrect, or even hateful things in public.

2. This IS NOT a violation of the right to free speech. The Supreme Court has ruled that a government may pass and enforce laws against noises that cause public disturbance.

3. This IS a violation of the person's constitutional right to free speech. The speech is not seditious because the person has not advocated any immediate and specific act of violence.

4. This IS a violation of the person's right to free speech. The Supreme Court has ruled that flag-burning is an example of symbolic speech, which the government may not stop.

5. This IS NOT a violation of the person's right to free speech. If it provides "due process" for the person, the school board may dismiss an employee for incompetent job performance. But, the school board may not restrict the teacher's freedom to speak incorrectly or foolishly outside the classroom.

★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★

CHAPTER 5

The Supreme Court and Constitutional Rights

Article III, Section 1 of the U.S. Constitution says: "The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation which shall not be diminished during their Continuance in Office."

Section 2 says: "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and treaties made, or which shall be made, under their Authority. . . ."

Article III of the Constitution establishes an independent judiciary and grants this branch of the government the power to make judgments about the Constitution, federal statutes, and treaties. This independent federal judiciary, especially the Supreme Court, has used its power to define and protect civil liberties and rights of Americans against abuses of power by the legislative and executive branches.

What, exactly, is the power of the independent federal judiciary to protect constitutional rights? Why and how was this power established? How has it been used to defend the liberties of individuals in the Bill of Rights and other parts of the United States Constitution?

Judicial Independence, Judicial Review, and Civil Liberties

The independence of the federal judicial branch is based on the insulation of its members, once appointed and confirmed in their positions, from punitive actions against them by the legislative and executive branches. According to Article III of the Constitution, federal judges may hold their positions "during good Behaviour"—in effect they have life-time appointments as long as they satisfy the ethical and legal standards of their judicial offices. Furthermore, Article III provides that the legislative and executive branches may not combine to punish federal judges by decreasing payments for their services. The intention of these constitutional provisions is to guard the federal judges against undue influence from the legislative and executive branches in the exercise of their judicial power.

The judicial power is the authority to interpret the Constitution, to apply the ideas in it to particular cases in the law, and to declare laws unconstitutional if they do not, in the opinion of the judges, conform to the supreme law, the U.S. Constitution. The power of the judiciary to determine the constitutionality of acts of other branches of government is known as judicial review. All courts, federal and state, may exercise the power of judicial review, but the Supreme Court of the United States has the final judicial decision on whether laws or actions of local, state, or federal governments violate or conform to the U.S. Constitution, the highest law of the land.

Judicial review is not mentioned in the Constitution. However, before 1787 this power was used by courts in several of the American states to overturn laws that conflicted with the state constitution. Judicial review by the federal judiciary over state laws is also implied in the U.S. Constitution in Articles III and VI. As stated above, Article III says that the federal courts have power to make judgments in all cases

pertaining to the Constitution, statutes, and treaties of the United States.

Article VI implies that the judicial power must be used to protect and defend the authority of the U.S. Constitution *vis a vis* the laws and constitutions of the states: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made under the authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." Furthermore, Article VI declares that all officials of the federal and state governments, including all "judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution. . . ."

The federal government enacted the Judiciary Act of 1789, which established a judicial system for the United States. In its Section 25, this statute provided for review by the U.S. Supreme Court of decisions by state courts that involved issues of federal law.

Under provisions of Articles III and VI of the U.S. Constitution and Section 25 of the Judiciary Act of 1789, the Supreme Court of the United States in 1796 (*Ware v. Hylton*) exercised the power of judicial review to strike down a law of the state government of Virginia. According to the U.S. Supreme Court, the Virginia law was unconstitutional because it violated the 1783 Treaty of Paris. This judicial decision was generally viewed as consistent with the words of the U.S. Constitution and the intentions of its framers. An open-ended and troublesome question of the founding period was whether or not the power of judicial review could be used to nullify acts of the legislative or executive branches of the federal government.

Alexander Hamilton argued in *The Federalist* No. 78 (1788) for judicial review as a means to void all governmental actions contrary to the Constitution. He maintained that limitations on the power of the federal legislative and executive branches to protect the rights of individuals "can be preserved in practice no other way than through. . .courts of justice, whose duty it must be to declare all acts contrary to. . .the Constitution void. Without this [power of judicial review], all the reservations of particular rights or privileges would amount to nothing. . . ."

Hamilton concluded: "No legislative act, therefore, contrary to the Constitution, can be valid. . . . [T]he interpretation of the laws is the proper and peculiar province of the courts. A constitution is. . .a fundamental law. It therefore belongs to them [judges] to ascertain its meaning as well as the meaning of any particular act proceeding from the legislative body. . . ."

The ideas on judicial review in *The Federalist* No. 78 were applied by John Marshall, Chief Justice of the United States, in *Marbury v. Madison* (1803). The specific issue and decision in this case are today of little interest or consequence. However, Chief Justice Marshall's argument for judicial review, which firmly established this power in the federal government's system of checks and balances, has become a strong instrument of the federal courts in securing the constitutional rights of individuals.

In *Marbury v. Madison*, the Supreme Court was confronted with an act of Congress that conflicted with a provision of the United States Constitution. Marshall asked "whether an act, repugnant to the constitution, can become the law of the land." He answered that the Constitution is "the fundamental and paramount law of the nation, and consequently,. . .an act of the legislature repugnant to the constitution is void." Marshall argued from the "supremacy clause" of Article VI that *no* act of

Congress, which violates any part of the Constitution, the highest law, can be valid. Rather, it must be declared unconstitutional and repealed.

Marshall concluded with his justification for the Supreme Court's power of judicial review:

> It is, emphatically, the province and duty of the judicial department, to say what the law is. . . . So, if a law be in opposition to the constitution; if both the law and the constitution apply to a particular case, so that the court must either decide that case, conformable to the law, disregarding the constitution; or conformable to the constitution, disregarding the law; the court must determine which of these conflicting rules governs the case; this is of the very essence of judicial duty. If then, the courts are to regard the constitution, and the constitution is superior to any ordinary act of the legislature, the constitution, and not such ordinary act, must govern the case to which both apply. . . .

Marshall used three provisions of the Constitution to justify his arguments for judicial review. The first was Article III, Section 2, which extends the judicial power to "all Cases, in Law and Equity, arising under this Constitution. . . ." Marshall argued: "Could it be the intention of those who gave this power, to say, that in using it, the constitution should not be looked into? That a case arising under the constitution should be decided, without examining the instrument under which it arises? This is too extravagant to be maintained."

Second, Article VI requires judges to pledge "to support this Constitution." Marshall wrote: "How immoral to impose [this oath] on them, if they were to be used as the instruments . . . for violating what they swear to support!"

Third, Marshall pointed out "that in declaring what shall be the supreme law of the land [Article VI], the constitution itself is first mentioned; and not the laws of the United States, generally, but those only which shall be made in pursuance of the constitution, have that rank."

Finally, Chief Justice Marshall stated "the principle, supposed to be essential to all written constitutions, that a law repugnant to the constitution is void; and that courts, as well as other departments [of the government], are bound by that instrument."

Records of the Federal Convention (1787) and the First Federal Congress (1789) reveal that Marshall's arguments for judicial review agree with the intentions of the framers of the Constitution in 1787 and the Bill of Rights in 1789. For example, Rufus King of Massachusetts reflected the views of most of his colleagues at the Federal Convention when he said that "the Judges will have the expounding of these laws when they come before them; and they will no doubt stop the operation of such as shall appear repugnant to the Constitution" (Farrand 1937, Vol. I, p. 97). James Madison spoke with foresight during the First Federal Congress, when on June 8, 1789 he predicted that the "independent tribunals of justice [federal courts] will consider themselves in a peculiar manner the guardians of those [constitutional] rights . . . [and] resist every encroachment upon rights expressly stipulated . . . by the declaration [bill] of rights" (quoted in Rutland 1962, p. 206).

During the more than 200 years of its existence, the Supreme Court has used its power of judicial review to overturn more than 110 acts of Congress and more than 1,000 state laws. The great majority of these invalidations of federal and state acts have occurred during the twentieth century. The Supreme Court, for example,

declared only three federal acts and 53 state laws unconstitutional from 1789 until 1868. Most of the laws declared unconstitutional since 1925 have involved civil liberties in the Bill of Rights and subsequent amendments concerned with the rights of individuals. Thus, the Supreme Court has become the guardian of the people's liberties that James Madison said it would be at the inception of the republic.

Lesson 7: Judicial Review and the Bill of Rights

This lesson is about the origin and justification of judicial review and the relationship of this power to civil liberties in the Constitution.

Objectives. Students are expected to (1) explain judicial review and its relationship to constitutional rights, (2) explain reasons used by Alexander Hamilton and John Marshall to justify judicial review of acts of the federal legislative and executive branches, and (3) evaluate a statement against judicial review.

Procedures. Examine with students the provisions in Articles III and VI of the U.S. Constitution about the powers and duties of the federal judiciary. Ask students to offer their opinions, based on the contents of Articles III and VI, about the role of federal judges in protecting the constitutional rights of individuals.

Introduce the concept of judicial review and point out that it is not stated in the Constitution. Ask students what they know about the origin and justification of this power and its significance as a safeguard of civil liberties.

At this point you may want to copy and distribute to students the preceding commentary in this chapter on judicial independence, judicial review, and civil liberties. Ask students to read this material and to pay close attention to ideas of Alexander Hamilton (*The Federalist* No. 78) and John Marshall (*Marbury v. Madison*) in support of judicial review. An alternative procedure is to present the ideas on judicial review in this chapter through a brief lecture and discussion.

Questions for Students. Ask students to discuss the following questions about judicial review and constitutional rights. Use information and ideas in this chapter to guide the discussion and evaluate responses to the questions.

1. According to Articles III and VI of the Constitution, what are the powers and duties of the federal judiciary? Can these provisions be used to justify the exercise of judicial review over acts of state governments? Explain.

2. What were Alexander Hamilton's arguments, in *The Federalist* No. 78, for judicial review over acts of the legislative and executive branches of the federal government?

3. How did John Marshall justify his use of judicial review in *Marbury v. Madison* (1803)?

4. How is judicial review related to the protection of civil liberties in the Bill of Rights and other parts of the Constitution? Provide examples in support of your answer.

5. Some critics of judicial review oppose it by arguing that it is a contradiction of government by majority rule of the people. They also claim that it gives too much power to a small number of judges, who are not elected by the people, to impose their will against the majority will of the people. Do you agree or disagree with this position? Explain.

Development of Constitutional Rights in the Twentieth Century

The federal courts have used their power of judicial review to develop constitutional law on the civil liberties and rights of individuals. This evolution of constitutional rights through decisions in federal courts has taken place mostly during the twentieth century, and it has mostly involved cases about state and local laws, not federal laws. Thus the judicial decisions on constitutional rights of the twentieth century have been a significant departure from the past, especially from the pre-Civil War past.

In 1833 the Supreme Court made a decision (*Barron v. Baltimore*) that confirmed the common understanding about the federal Bill of Rights as a set of limitations only upon the government of the United States. The First Amendment freedoms of religion, speech, press, assembly, and petition, for example, checked only the federal government, not the state governments, which retained power to deal with these matters according to their own constitutions and statutes.

In 1868 the ratification of the Fourteenth Amendment established new limitations upon state governments. Section 1 says: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." However, during the remainder of the nineteenth century and the first quarter of the twentieth century, the Supreme Court tended to interpret Amendment XIV narrowly, and thus did not use it to enhance significantly the constitutional rights of individuals.

The first departure from this narrow view of the Fourteenth Amendment came in 1897 with the decision in *Chicago, Burlington & Quincy Railroad Company v. Chicago.* The Supreme Court decided that the "due process" clause of the Fourteenth Amendment required the states when taking private property for a public use to give the property owners fair compensation. This right is also provided by the "just compensation" clause of the Fifth Amendment of the Bill of Rights. Thus, for the first time, a provision of the federal Bill of Rights (Amendment V in this instance) had been used to limit the power of a state government via the "due process" clause of the Fourteenth Amendment.

The next opening for the application of the federal Bill of Rights to the states via the Fourteenth Amendment came in 1908 with the decision in *Twining v. New Jersey.* The court decided against application of the self-incrimination clause of the Fifth Amendment to the states via the "due process" clause of the Fourteenth Amendment. However, the Court stipulated that the "due process" clause could in principle incorporate some rights like those in the federal Bill of Rights because they were essential to the idea of due process of law. The Court provided this guideline for future decisions about which rights were due each individual: "Is it [the right in question] a fundamental principle of liberty and justice which inheres in the very idea of free government and is the inalienable right of a citizen of such a government?" With this guideline, *Twining v. New Jersey* opened the way to future applications to the states of rights in the federal Bill of Rights.

In 1925 the door to application of the federal Bill of Rights to the states was opened wider in the case of *Gitlow v. New York.* Gitlow claimed that the state of New York had unlawfully denied his First Amendment right to free expression under the "due process" clause of the Fourteenth Amendment. The Court upheld Gitlow's convic-

tion, but acknowledged the principle of incorporation of First Amendment freedoms in the "due process" clause of the Fourteenth Amendment and their application to the states. The Court asserted that for "present purposes we may and do assume that freedom of speech and of the press—which are protected by the First Amendment from abridgement by Congress—are among the fundamental personal rights and 'liberties' protected by the due process clause of the Fourteenth Amendment from impairment by the states."

A short time later, in 1931, the Supreme Court ruled again (*Near v. Minnesota* and *Stromberg v. California*) that the Fourteenth Amendment "due process" clause guaranteed the First Amendment rights of freedom of speech (*Stromberg*) and freedom of the press (*Near*) against the power of state governments. Chief Justice Charles Evans Hughes wrote (*Near v. Minnesota*): "It is no longer open to doubt that the liberty of the press and of speech is within the liberty safeguarded by the due process clause of the Fourteenth Amendment. It was found impossible to conclude that this essential liberty of the citizen was left unprotected by the general guaranty of fundamental rights of person and property."

Thus the Supreme Court, through its power of judicial review, had nationalized beyond doubt the First Amendment freedoms of speech and press. What about the other rights in the federal Bill of Rights? Were they also applicable to the states through the "due process" clause of the Fourteenth Amendment?

These questions were answered slowly, on a case-by-case basis, from the 1930s through the 1980s. As of 1991, the 200th anniversary of the Bill of Rights, most provisions in the federal Bill of Rights had been nationalized through decisions of the Supreme Court and were generally accepted as legitimate limitations on the powers of state governments. The exceptions were Amendment II (the right to bear arms), Amendment III (restrictions on the quartering of soldiers), the "grand jury indictment" clause of Amendment V, Amendment VII (requirement of jury trials in civil cases), and the "excessive fines and bail" clause of Amendment VIII.

James Madison, primary author of the federal Bill of Rights, had wanted to restrict the powers of state governments to interfere with the individual's rights to freedom of speech, press, and religion and to trial by jury in criminal cases. He had proposed to the First Federal Congress, in the summer of 1789, that, "No state shall infringe the equal rights of conscience, nor the freedom of speech, or of the press, nor of the right to trial by jury in criminal cases." However, this proposal was voted down in Congress, and the principle inherent in it was not revived until ratification of the Fourteenth Amendment in 1868.

According to the records of the First Federal Congress (quoted in Alley 1985, p. 76): "Mr. Madison conceived this to be the most valuable amendment on the whole list [of amendments that constituted the federal Bill of Rights]; if there was any reason to restrain the government of the United States from infringing upon these essential rights, it was equally necessary that they should be secured against the state governments. . . ."

The Supreme Court, in using the power of judicial review to extend rights in the federal Bill of Rights to the states, has agreed with the intentions of James Madison. The Court has gradually and securely fulfilled Madison's great hope that the law would be used to limit the power of federal and state governments to protect the inherent liberties of individuals.

Lesson 8: The Bill of Rights and the Fourteenth Amendment

This lesson deals with the use of the "due process" clause of the Fourteenth Amendment to extend provisions of the federal Bill of Rights to the states.

Objectives. Students are expected to (1) explain how the Fourteenth Amendment was used by the Supreme Court to apply provisions of the federal Bill of Rights to the states, (2) identify and explain key decisions of the Supreme Court in the nationalization of the federal Bill of Rights, and (3) discuss the importance of the nationalization of the federal Bill of Rights in the lives of individuals today.

Procedures. Ask students whether or not the federal Bill of Rights can be used to restrict their local or state governments from depriving them of certain rights, such as freedom of speech, press, and religion. If they say yes, as is likely, then read the language of the First Amendment which clearly restricts only the federal government. In addition tell them about the Supreme Court's 1833 decision in *Barron v. Baltimore* and ask them to explain how we got from the *Barron* case of 1833, which limited only the federal government with regard to the Bill of Rights, to the current situation in which the Bill of Rights has been nationalized.

Follow up on this discussion with a presentation of main ideas in the preceding section of this chapter on the nationalization of the Bill of Rights. You may prefer to copy and distribute these pages of this chapter and ask students to read them in preparation for a concluding discussion based on the following questions.

Questions for Students. Conduct a class discussion on the questions below. Draw upon ideas and information in the preceding section of this chapter to guide the discussion and evaluate students' responses to the following questions.

1. What does it mean to say that the federal Bill of Rights has been nationalized? (In discussing this question be sure to explain the relationship between the Fourteenth Amendment and provisions of the Bill of Rights.)

2. What did each of the following cases have to do with the nationalization of the Bill of Rights?

   a. *Chicago, Burlington & Quincy Railroad Company v. Chicago* (1897)
   b. *Twining v. New Jersey* (1908)
   c. *Gitlow v. New York* (1925)
   d. *Near v. Minnesota* (1931)
   e. *Stromberg v. California* (1931)

3. As of 1991, what parts of the federal Bill of Rights had not been nationalized through the "due process" clause of the Fourteenth Amendment?

4. Do you approve of the nationalization of the Bill of Rights? Explain. Can you think of any drawbacks or disadvantages to the nationalization of the Bill of Rights?

Evolution of Fourth Amendment Rights

The development of Fourth Amendment rights to protection "against unreasonable searches and seizures" exemplifies the use of judicial review by the Supreme Court to nationalize the Bill of Rights. Provisions of the Fourth through Eighth Amendments to the Constitution specify how the government must act in criminal proceedings. The application of these Bill of Rights provisions to the states has represented a great enhancement of the rights of individuals accused of crimes.

Amendment IV says: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath

or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The principle in Amendment IV is clear: the privacy of the individual is protected against arbitrary intrusion by agents of the government. In 1949 Justice Felix Frankfurter wrote (*Wolf v. Colorado*): "The security of one's privacy against arbitrary intrusion by the police is basic to a free society. The knock at the door, whether by day or by night, as a prelude to a search, without authority of law but solely on the authority of the police, did not need the commentary of recent history to be condemned as inconsistent with the conception of human rights enshrined in the history and the basic constitutional documents of English-speaking peoples."

The Fourth Amendment protection of the individual's security against "unreasonable searches and seizures" is reinforced by the clause that requires a valid warrant as the prerequisite to "searches and seizures." A valid warrant, of course, shall not be issued unless there is a finding of "probable cause" by a neutral and detached magistrate.

The Fourth Amendment principle of personal security against unlawful intrusion is clear enough. But the exact meaning of the key phrases, and their precise application in specific cases, requires interpretation and judgment—the duties of the federal courts. What constitutes "unreasonable searches and seizures"? What exactly is the meaning of "probable cause"? We look to the federal courts, especially to the Supreme Court of the United States, for answers to these challenging questions.

In making judgments about Fourth Amendment rights, the federal courts attempt to balance liberty and order—the rights of the individual to freedom from tyranny and the needs of the community for stability, security, and safety. A government must exercise power to provide order and safety for its people. But if the government has too much power, then the people's liberties may be lost. The Constitution of the United States, especially in its guarantees of individual rights, limits the power of government to protect the liberties of individuals. But if these legal limits are too strict, then the government will be too weak to carry out its duties effectively; it will not be able to enforce laws to maintain order within the community. Thus lack of power in government inevitably leads to disorder and instability in the community and insecurity of individuals in their safety, property, and liberty.

In applying the Fourth Amendment to specific cases, federal judges must decide when to provide more or less latitude for the rights of individuals suspected of criminal acts. For example, under what conditions, and for what ends, should a federal judge be more or less strict in applying the concept of "probable cause" in the issue of a search warrant? Are there any situations which justify a warrantless search by government officials? If so, what are they, and what are the justifications? In these decisions, federal judges must try to balance the necessary and proper exercise of power by the government against the inherent rights of individuals to protection against that power.

The following Table of Cases on Fourth Amendment Rights exemplifies the evolution of constitutional rights in the twentieth century. Notice that the nationalization of the Fourth Amendment did not occur until 1949, *Wolf v. Colorado*. Since that time, however, most of the Fourth Amendment cases have involved actions at the state level of government. On balance, decisions in these cases have gradually enhanced rights of individuals against the power of government.

Table of Cases on Fourth Amendment Rights

1. *Weeks v. United States* (1914). Decided by a unanimous vote. A person may require that evidence obtained in a search shall be excluded from use against her/him in a federal court.

2. *Carroll v. United States* (1925). Decided by a 7-2 vote. Federal agents can conduct searches of automobiles without a warrant whenever they have reasonable suspicion of illegal actions.

3. *Olmstead v. United States* (1928). Decided by a 5-4 vote. Wiretaps by federal agents are permissible where no entry of private premises has occurred.

4. *Wolf v. Colorado* (1949). Decided by a 6-3 vote. Fourth Amendment protections apply to searches by state officials as well as federal agents. However, state judges are not required to exclude evidence obtained by searches in violation of Fourth Amendment rights.

5. *Mapp v. Ohio* (1961). Decided by a 5-4 vote. Evidence obtained in violation of Fourth Amendment rights must be excluded from use in state and federal trials.

6. *Katz v. United States* (1967). Decided by a 7-1 vote. Electronic surveillance and wiretapping are within the scope of the Fourth Amendment, because it protects whatever an individual wants to preserve as private, including conversations and behavior, even in a place open to the public.

7. *Terry v. Ohio* (1968). Decided by an 8-1 vote. The police may "stop and frisk" or search a suspect's outer clothing for dangerous weapons, if they suspect that a crime is about to be committed.

8. *Chimel v. California* (1969). Decided by a 6-2 vote. Police may search only the immediate area around the suspect from which he/she could obtain a weapon or destroy evidence. But a person's entire dwelling cannot be searched merely because he/she is arrested there.

9. *Marshall v. Barlows, Inc.* (1978). Decided by a 5-3 vote. Federal laws cannot provide for warrantless inspections of businesses that are otherwise legally regulated by a federal agency. A federal inspector must obtain a search warrant when the owner of the business to be inspected objects to a warrantless search.

10. *United States v. Ross* (1982). Decided by a 6-3 vote. Police officers may search an entire vehicle they have stopped, without obtaining a warrant, if they have probable cause to suspect that drugs or other contraband are in the vehicle.

11. *United States v. Leon* (1984). Decided by a vote of 6-3. Evidence seized on the basis of a mistakenly issued search warrant can be introduced in a trial, if the warrant was issued in "good faith"—that is, on presumption that there were valid grounds for issuing the warrant.

12. *New Jersey v. T.L.O.* (1985). Decided by a vote of 5-4. School officials do not need a search warrant or probable cause to conduct a reasonable search of a student. The school officials may search a student if there are reasonable grounds for suspecting that the search will uncover evidence that the student has violated or is violating

either the law or the rules of the school.

13. *California v. Greenwood* (1988). Decided by a vote of 6-2. The police may search through garbage bags and other trash containers that people leave outside their houses in order to obtain evidence of criminal activity. This evidence may be used subsequently as the basis for obtaining a warrant to search a person's house.

14. *Michigan v. Sitz* (1990). Decided by a vote of 6-3. The police may stop automobiles at roadside checkpoints and examine the drivers for signs of intoxication. Evidence obtained in this manner may be used to bring criminal charges against the driver.

Lesson 9: Decisions about Fourth Amendment Rights

This lesson is about the development of Fourth Amendment rights during the twentieth century through decisions of the United States Supreme Court.

Objectives. Students are expected to (1) analyze trends in a series of twentieth century Supreme Court decisions about Fourth Amendment rights, (2) identify and discuss Supreme Court decisions that nationalized and otherwise expanded the scope of Fourth Amendment rights, (3) identify and discuss Supreme Court decisions that constricted Fourth Amendment rights, and (4) evaluate Supreme Court decisions about Fourth Amendment rights.

Procedures. Ask students to examine the Fourth Amendment of the U.S. Constitution. Discuss the provisions of this amendment and identify the rights that it guarantees and procedures used to guarantee them. Identify and discuss the challenging questions and issues raised by application of the Fourth Amendment to specific cases. Finally discuss with students the delicate balance of liberty and order that may be involved in judicial decisions about Fourth Amendment rights. Use ideas and information in the preceding section of this chapter during this discussion. You may want to copy these pages and distribute them to students, so that they can read these pages in preparation for the introductory discussion.

Turn to the pages of this chapter that contain the Table of Cases on Fourth Amendment Rights. Make copies of this table and distribute them to students. Ask students to study the series of decisions in these cases and to look for trends. In particular, they should identify the decisions that have expanded Fourth Amendment rights and those that have constricted these rights.

Questions for Students. Use data in the Table of Cases on Fourth Amendment rights to discuss the questions below.

1. In which case did the Court decide for the first time to nationalize Fourth Amendment rights? Explain the signficance of this decision in the development of Fourth Amendment rights of individuals.

2. Have most Supreme Court decisions about Fourth Amendment rights pertained to actions of the federal government or the state governments? What trend can you identify about the level of government to which Fourth Amendment limitations have been applied during the twentieth century?

3. Which Supreme Court decisions expanded the rights of individuals? Explain.

4. Which Supreme Court decisions constricted the rights of individuals? Explain.

5. On balance, have the Fourth Amendment rights of individuals been expanded more than they have been constricted during the twentieth century? What is the trend?

6. Compare the decision in *Olmstead v. United States* (1928) with the decision in *Katz v. United States* (1967). Does the decision in the *Katz* case sustain or overturn the decision in the *Olmstead* case? Explain.

7. What does the idea of ordered liberty have to do with Supreme Court decisions about Fourth Amendment rights of individuals?

8. In your opinion, which five decisions in this table are the most important in the development of Fourth Amendment rights? Rank your selections in the order of their importance. Explain your ranking. What are your reasons for choosing these five decisions and ranking them as you did?

CHAPTER 6

Bill of Rights Issues in the United States

The Bill of Rights in the abstract holds little interest and no practical consequences for most people. Constitutional rights, however, are meaningful for all individuals in a society that values limited government and the rule of law as instruments of liberty. Civil liberties and rights are certainly *not* found in anarchy, and they are at risk in societies with too little regard for the positive effects of law and order. But these inherent human rights are also threatened by any government that overemphasizes power to achieve law and order.

How can liberty and authority, freedom and power, be combined and balanced in a society? This was the basic political problem of the founding period in the United States, and it continues to challenge Americans today. During the debate on ratification of the Constitution, for example, James Madison wrote: "It is a melancholy reflection that liberty should be equally exposed to danger whether the Government have too much or too little power; and that the line which divides these extremes should be so inaccurately defined by experience" (letter to Jefferson, October 17, 1788).

Madison noted the standing threat to liberty posed by the unlimited power of government. He also recognized that liberty carried to the extreme of license is equally dangerous to the freedom and rights of individuals. A free society must have both liberty and order, but the right balance is difficult to find and maintain. The difficult questions, of course, are these two: (1) At what point, under what conditions, and for what ends, should the power of government be limited to protect the liberties and rights of individuals? (2) At what point, under what conditions, and for what ends, should limits be placed on the liberties and rights of individuals to protect the security and order of the community?

In the United States, the federal courts have the power and the constitutional responsibility to authoritatively address these generic questions, and to resolve disputes about them on a case-by-case basis. But the questions are never answered definitively, once and for all. They remain on the docket as challenges of citizenship in a constitutional democracy, where liberty and order are combined in the perennial pursuit of justice.

The tension between majority rule and minority rights in a constitutional democracy is another way to view this fundamental problem of establishing and maintaining ordered liberty. The power of government in the United States is supposed to reflect the will of the majority, which is carried out by elected representatives of the people. This power of majority rule is both sanctioned and limited by the supreme law of the Constitution to protect the rights of individuals. Tyranny by the majority is barred. But so is tyranny by a minority.

In his First Inaugural Address (1801), Thomas Jefferson memorably stated the necessity of somehow accommodating the countervailing claims of majority rule and minority rights in a constitutional democracy. Jefferson said: "All, too, will bear in mind this sacred principle, that though the will of the majority is in all cases to prevail, that will to be rightful must be reasonable; that the minority possess their equal rights, which equal law must protect, and to violate would be oppression."

It is relatively easy to recognize the need for a line to separate the legitimate rights

of minorities from those of majorities. But exactly where should the line be drawn, when, and how? These questions are often hard to answer in specific cases, and they cannot be resolved universally.

In the United States, the Supreme Court has the authority and the final responsibility to draw the line in specific cases to settle issues about majority rule and minority rights. Thus, liberty for all is achieved only through the rule of law, applied by the Court under a Constitution that sets limits upon the use of power. In the constitutional democracy of the United States, the people look to the Supreme Court to resolve issues in particular cases about limits on majority rule and limits on minority rights for the purpose of protecting the liberties and rights of everyone in the society.

In many of its landmark decisions, the Supreme Court has drawn the line to limit majority rule and the power of government in order to protect the rights of individuals in the minority. In many other landmark cases, the Court has reinforced the power and authority of the government in order to limit the liberties and rights of individuals or minority groups. In every case, members of the Court have tried to resolve issues according to their understanding of the supreme law of the United States Constitution.

The five landmark cases discussed in the remainder of this chapter are examples of Supreme Court decisions to resolve complex issues about provisions of the Bill of Rights. Each decision is an attempt to resolve a conflict in civic values about the legitimate powers of government and the legitimate limits on those powers to protect the liberties of individuals, about the claims of the community at large versus the counterclaims of individuals, about majority rule and minority rights. Furthermore, each case is about a Bill of Rights issue in the lives of young Americans, and a public school is the setting for the central issue in each case.

The titles of these cases are listed below:

- *West Virginia State Board of Education v. Barnette* (1943).
- *Engel v. Vitale* (1962).
- *Tinker v. Des Moines Independent School District* (1969).
- *New Jersey v. T.L.O.* (1985).
- *Hazelwood School District v. Kuhlmeier* (1988).

Case 1: *West Virginia State Board of Education v. Barnette* (1943)

Background Information. The government of West Virginia made a law that required students in public schools to salute the flag and pledge allegiance to it. Refusal to comply with this act would be considered insubordination and punished by expulsion from school. Readmission to school would be granted only on condition of compliance with the flag-salute law. Furthermore, an expelled student would be considered unlawfully absent from school and her/his parents or guardians liable to prosecution.

Children and their parents, who were Jehovah's Witnesses, refused to obey the flag-salute law on grounds that it violated their religious beliefs. They viewed the flag of the United States as a "graven image," and their religion forbade them to "bow down to" or "worship a graven image." They argued that God's law was superior to the laws of the state. In turn, the local school authorities, backed by the West Virginia Board of Education, moved to punish the children and their parents who would not obey the law. Thus, several West Virginia Jehovah's Witness families, including the family of Walter Barnette, sued for an injunction to stop enforcement of the flag-salute law.

The Issue in this Case. Did the West Virginia flag-salute law violate the constitutional right to religious freedom of children professing the Jehovah's Witnesses religion?

The Decision. By a vote of 6-3, the Court ruled that the West Virginia flag salute requirement was unconstitutional. Justice Robert H. Jackson wrote the majority opinion. He said that public officials could act to promote national unity through patriotic ceremonies. However, they could not use compulsion of the kind employed in this case to enforce compliance. In particular, the First Amendment to the Constitution (applied to the state government through the "due process" clause of the Fourteenth Amendment) prohibited public officials from forcing students to salute the flag against their religious beliefs.

"Compulsory unification of opinion achieves only the unanimity of the graveyard," said Jackson. He concluded with one of the most quoted paragraphs in the annals of the Supreme Court:

> If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us.

Dissenting Opinion. In dissent, Justice Felix Frankfurter concluded that the state school board had the constitutional authority to require public school students to salute the flag. He wrote that minorities can act to disrupt civil society by not complying with its mandates, and that the Court should support the duly enacted legislation at issue in this case, which clearly reflected the will of the majority in West Virginia. If citizens of West Virginia dislike laws enacted by their representatives in the state legislature, then they should try to influence that legislature to change the laws. According to Justice Frankfurter, the Supreme Court had overstepped its authority in placing its judgment above that of the elected legislature and school boards in West Virginia. "The courts ought to stand aloof from this type of controversy," he concluded.

Case 2: *Engel v. Vitale* (1962)

Background Information. The Board of Regents of the state of New York has authority to supervise the state's educational system. This state education board composed a short prayer: "Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers, and our Country." The Board of Regents recommended daily recital in schools of this non-denominational prayer, on a voluntary basis.

Although the Regents Prayer was only a recommendation, a local school district in the state, the New Hyde Park Board of Education, required that this prayer had to be said aloud at the beginning of each day in school by each class of students, and in the presence of a teacher. The parents of ten students objected to this requirement as a violation of the principle of "Separation of Church and State" in the First Amendment to the Constitution. They took legal action to compel the local board of education to discontinue use in public schools of an official prayer that was contrary to the beliefs and practices of themselves and their children.

The Issue in this Case. Did the New York Board of Regents and the Board of Education of New Hyde Park violate the First Amendment provision against laws "respecting an establishment of religion"?

The Decision. The Court decided, by a vote of 6-1 (two Justices did not take part in this case), to strike down the "Regents Prayer." Justice Hugo Black wrote for the majority and said that the primary concern in this case was the creation of the "Regents Prayer" and the subsequent distribution of it throughout the state by an official agency of the state government. These actions violated the "establishment clause" of the First Amendment, which was applicable to the state of New York through the "due process" clause of the Fourteenth Amendment. Justice Black concluded: "Neither the fact that the prayer may be denominationally neutral nor the fact that its observance on the part of the students is voluntary [in school districts other than New Hyde Park] can serve to free it from the limitations of the Establishment Clause [which] is violated by the enactment of laws which establish an official religion whether those laws operate directly to coerce nonobserving individuals or not."

Dissenting Opinion. Justice Potter Stewart dissented on the grounds that the "Regents Prayer" was non-denominational and voluntary. Justice Stewart wrote: "With all due respect, I think the Court has misapplied a great constitutional principle. I cannot see how an 'official religion' is established by letting those who want to say a prayer say it. On the contrary, I think that to deny the wish of these school children to join in reciting this prayer is to deny them the opportunity of sharing in the spiritual heritage of the Nation."

Case 3: *Tinker v. Des Moines Independent School District* (1969)

Background Information. In December 1965 some adults and students in Des Moines, Iowa decided to publicly express their opposition to the war in Vietnam by wearing black armbands. In response, the school principals in Des Moines decided upon a policy that forbade the wearing of a black armband in school. Students who violated the policy would be suspended from school until they agreed to comply with the policy.

On December 16, Mary Beth Tinker and Christopher Eckhardt wore armbands to their schools. John Tinker did the same thing the next day. As a consequence, the three students were suspended from school and told not to return unless they removed their armbands. They stayed away from school until the early part of January 1966.

The three students filed a complaint, through their parents, against the school officials. They sought an injunction to prevent the officials from punishing them for wearing black armbands to school.

The Issue in this Case. Did the school district's policy of prohibiting the wearing of black armbands in school violate the students' First Amendment right to free speech?

The Decision. The Court decided by a vote of 7-2 that the school district had violated the students' right to free speech under the First and Fourteenth Amendments to the U.S. Constitution. Justice Abe Fortas wrote the majority opinion in which he decided that the wearing of black armbands to protest the Vietnam war was a form of "symbolic speech" protected by the First Amendment. Therefore, a public school ban on this form of protest was a violation of the students' right to free speech, as long as the protest did not disrupt the functioning of the school or violate the rights of other individuals. Justice Fortas wrote: "First Amendment rights applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."

Dissenting Opinion. Justice Hugo Black was one of the two dissenters in this case. He wrote:

> While I have always believed that under the First and Fourteenth Amendments neither the State nor the Federal Government has any authority to regulate or censor the content of speech, I have never believed that any person has a right to give speeches or engage in demonstrations where he pleases and when he pleases. This Court has already rejected such a notion. . . .
>
> . . .One does not need to be a prophet or the son of a prophet to know that after the Court's holding today some students in Iowa schools and indeed in all schools will be ready, able, and willing to defy their teachers on practically all orders. . . .
>
> . . .This case, therefore, wholly without constitutional reasons in my judgment, subjects all the public schools in the country to the whims and caprices of their loudest-mouthed, but maybe not their brightest students.

Case 4: *New Jersey v. T.L.O.* (1985)

Background Information. A student at a New Jersey high school was discovered by a teacher smoking cigarettes in a school lavatory. This was a violation of school rules, so the teacher took the student to the office of the principal. The assistant principal questioned the student, who denied she had been smoking in the lavatory. The school official then demanded to see her purse. After opening it, he found cigarettes, cigarette rolling papers that are commonly associated with the use of marijuana, a pipe, plastic bags, money, a list of students who owed money to this girl, and two letters that contained evidence that she had been involved in marijuana dealings.

As a result of this search of the student's purse and the seizure of items in it, the state brought delinquency charges against the student in New Jersey Juvenile Court. The student countered with a motion to suppress evidence found in her purse as a violation of her constitutional rights against unreasonable and unwarranted "searches and seizures."

The Issue in this Case. Is the Fourth Amendment prohibition of unreasonable and unwarranted searches and seizures applicable to officials in a public school with regard to students of the school?

The Decision. In a mixed opinion, the Court decided that (1) the Fourth Amendment prohibition on unreasonable searches and seizures is applicable to searches conducted by public school officials and (2) in this case a warrantless search of the student's purse was reasonable and permissible.

Justice Byron White wrote the opinion of the Court. He said that school officials may search a student in school so long as "there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school."

Dissenting Opinion. Justice John Paul Stevens wrote in dissent:

> The search of a young woman's purse by a school administrator is a serious invasion of her legitimate expectations of privacy. . . . Because this conduct [of the student] was neither unlawful nor significantly disruptive of school order or the educational process, the invasion of privacy associated with the forcible opening of T.L.O.'s purse was entirely unjustified at its inception. . . .
>
> . . .The rule the Court adopts today is so open-ended that it may make the Fourth Amendment virtually meaningless in the school context. Although I agree that school administrators must have broad latitude to maintain order and discipline in our classrooms, that authority is not unlimited.

Case 5: *Hazelwood School District v. Kuhlmeier* (1988)

Background Information. Students in a high school journalism class were involved in the publication of a school-sponsored newspaper. The newspaper was produced through the journalism class and therefore was part of the school curriculum. Students in the journalism class became upset when the school principal deleted two pages from an issue of their school newspaper.

The deleted pages contained sensitive information about a student pregnancy and the use of birth control devices and about the divorce of the parents of a student in the school. The principal decided that the deleted articles were inappropriate for the intended readers of the school newspaper. However, the student journalists claimed that their constitutional rights to freedom of expression were violated by the principal.

The Issue in this Case. Did the school principal violate the constitutional rights to freedom of expression of student journalists when he deleted articles they had written from the school newspaper?

The Decision. The Court ruled, by a vote of 6-3, that the students' constitutional rights were *not* violated in this case. Justice Byron White wrote the majority opinion. He argued that "the First Amendment rights of students in the public schools are not automatically coextensive with the rights of adults in other settings." The application of these rights to students in schools, therefore, must be tempered by concern for the special conditions and purposes of the school setting.

White held that, "A school need not tolerate student speech that is inconsistent with its basic educational mission, even though the government could not censor similar speech outside the school." The school officials have the authority to regulate the contents of student writing in a school newspaper because the student journalists were producing this publication as part of the regular program of studies in the school. Thus, the school officials acted in their capacity as educators of these journalism students when they deleted material from the school newspaper.

Justice White concluded: "It is only when the decision to censor a school-sponsored publication . . . has no valid educational purpose that the First Amendment is so [involved] as to require judicial intervention to protect students' constitutional rights." But in this case, there was a valid educational purpose for limiting the students' freedom of expression.

Dissenting Opinion. Justice William Brennan wrote the dissent in this case:

> In my view the principal . . . violated the First Amendment's prohibitions against censorship of any student expression that neither disrupts classwork nor invades the rights of others . . . .
>
> . . . [E]ducators must accommodate some student expression even if it offends them or offers views or values that contradict those the school wishes to inculcate . . . .
>
> The mere fact of school sponsorship does not, as the court suggests, license such thought control in the high school, whether through school suppression of disfavored viewpoints or through official assessment of topic sensitivity. The former would constitute unabashed and unconstitutional viewpoint discrimination, as well as an impermissible infringement of the students' "right to receive information and ideas."

Lesson 10: Analyzing a Supreme Court Case

This lesson involves analysis and evaluation of a landmark Supreme Court case on a Bill of Rights issue: *West Virginia State Board of Education v. Barnette.*

Objectives. Students are expected to (1) analyze the Bill of Rights issue and decision in a landmark Supreme Court case, (2) evaluate the majority and dissenting opinion in this case, and (3) discuss the significance for citizens of the issue and decision in this case.

Procedures. Discuss with students the delicate balance between liberty and order and majority rule and minority rights that is at the center of Supreme Court cases and decisions about Bill of Rights issues. Draw upon ideas and information in the opening section of this chapter to guide and inform this classroom discussion. You may choose to copy and distribute to students these pages of this chapter and ask them to read this material in preparation for a classroom discussion of the key ideas in it. This discussion will set a context for the analysis of an important Supreme Court case: *West Virginia State Board of Education v. Barnette* (1943).

Copy and distribute to students the treatment of the *Barnette* case in this chapter. Ask students to read this synopsis of the case. Review with students the background information, the issue in the case, the decision of the Court, and the dissenting opinion.

Questions for Students. Use information in the *Barnette* case to discuss the following questions.

1. What was the Bill of Rights issue in this case? Explain how this issue was raised in this case.

2. What was the Court's decision in response to the Bill of Rights issue? How did Justice Jackson justify the Court's decision in this case? Identify his reasons and explain what they have to do with majority rule and minority rights.

3. Why did Justice Frankfurter disagree with the Court's decision? Identify his reasons and explain what they have to do with majority rule and minority rights and liberty and order.

4. What is your evaluation of the Court's decision in this case? Do you agree with it? Or do you agree with the dissenting opinion? Explain.

5. What is the significance of this Supreme Court case for you and other individuals in the United States? Explain the relevance of the issue and decision in this case to the lives of Americans today.

NOTE: You may want to use the objectives, procedures, and questions for students in this lesson on the "Barnette" case as a model for the case-by-case analysis of the other four Supreme Court cases on Bill of Rights issues in this chapter: *Engel v. Vitale, Tinker v. Des Moines Independent School District, New Jersey v. T.L.O.,* and *Hazelwood School District v. Kuhlmeier.*

Lesson 11: Bill of Rights Issues in Supreme Court Cases

This lesson involves comparative analysis and evaluation of Bill of Rights issues and decisions in five Supreme Court cases: (1) *West Virginia State Board of Education v. Barnette*, (2) *Engel v. Vitale*, (3) *Tinker v. Des Moines Independent School District*, (4) *New Jersey v. T.L.O.*, and (5) *Hazelwood v. Kuhlmeier.*

Objectives. Students are expected to (1) comparatively analyze the Bill of Rights issues and decisions in five Supreme Court cases, (2) evaluate the majority and dissenting opinions in these five cases, and (3) assess the significance for citizens today of the issues and decisions in these five cases.

Procedures. This lesson presumes knowledge of the paradoxes of liberty and order and majority rule and minority rights that are centrally involved in Bill of Rights issues and decisions in Supreme Court cases. If necessary, review with students the discussion of these ideas in the first section of this chapter.

Copy and distribute to students the synopses of the five Supreme Court cases in this chapter, which are listed in the opening paragraph of this lesson. Ask students to read the write-up of each case in preparation for a class discussion about the issues and decisions in these cases. Advise students to make sure they know the issue and the Court's decision in each case, in preparation for a subsequent class discussion.

Questions for Students. You may want to divide the class into groups of three to five students, depending on the size of the class. Students can be asked to discuss the following questions in these small groups in preparation for a subsequent full class discussion.

1. What parts of the Bill of Rights are at issue in the five cases in this lesson? What are the Bill of Rights issues in each of the five cases?

2. Which of the five cases in this lesson involve decisions that limit majority rule in favor of minority rights? Use information from the cases to explain your selections.

3. Which of the five cases in this lesson involve decisions that increase the power and authority of government officials relative to the liberties of individuals? What do these decisions have to do with the delicate balance of liberty and order in our constitutional system? Use information from the cases to explain your selections.

4. Do you agree or disagree with the decisions in each case? Explain.

5. Do you agree or disagree with the dissenting opinions in each case? Explain.

6. What is the significance of each of these cases for you and other persons in the United States? How do they pertain to you and other people in the United States today?

7. In your opinion, which of these five cases is the most significant for you and other Americans today? Explain.

Lesson 12: A Classroom Forum on Bill of Rights Issues

This lesson involves discourse and debate on Bill of Rights issues in important cases of the U.S. Supreme Court.

Objectives. Students are expected to (1) take a position for or against the Supreme Court's decision in an important Bill of Rights case and (2) defend this position to peers in a classroom forum.

Procedures. Divide the class into five groups with four, six, or eight students in each group, depending on the size of the class. Assign to each group one of the following five cases treated in this chapter: (1) *West Virginia State Board of Education v. Barnette*, (2) *Engel v. Vitale*, (3) *Tinker v. Des Moines Independent School District*, (4) *New Jersey v. T.L.O.*, and (5) *Hazelwood School District v. Kuhlmeier.*

Make and distribute copies of the synopses of each case to the students in the five groups. Tell half of the members of each group to take the "pro" position on its case and to defend the Court's decision. Tell the other half of each group to take the "con" position on its case and to oppose the Court's decision in the case. Inform the "pro" and "con" teams that they will prepare to present and defend their side on the case in a a classroom forum.

In preparing their positions on the case, students should work with information in the synopsis of its case, which is included in this chapter. They should also be encouraged to do library research to find additional information on the case assigned to them.

Allow each group to have 15 minutes for its forum presentation: 5 minutes for presentation of the "pro" side, 5 minutes for presentation of the "con" side, and 5 minutes for rebuttals and interactions among the two sides. The teacher should moderate each forum presentation.

Questions for Students. The following questions may be used to guide the organization and delivery of each forum presentation.

1. What is the issue in the case?
2. What is the decision of the Supreme Court in this case?
3. What is my position (pro or con) with reference to the Court's decision on the issue in this case?
4. What are two reasons, at least, that I can state and elaborate upon to justify my position on the decision and issue in this case?

These suggested questions should not be used to constrain students, but to facilitate their efforts. Students should be permitted to exercise their own judgment in organizing and presenting their position statements. However, the questions above may be helpful to many, if not all, of the students.

NOTE: You may want to ask the full class to participate in a discussion of the case in each forum, after the "pro" and "con" teams have completed their presentations.

CHAPTER 7

Guide to Materials for Teaching the Bill of Rights

The Bicentennial of the Bill of Rights has been a catalyst for the development of many high-quality commercial and non- commercial curriculum materials designed to facilitate better understanding of constitutional issues on the Bill of Rights. The materials listed in this publication are not presented as the only outstanding materials available. The ones chosen for inclusion, however, do meet certain criteria, which follow.

1. *The materials are intended for teachers and students in grades K-12.* Learning about the Bill of Rights is appropriate at all levels of instruction. During the elementary years the foundation for understanding, applying, and evaluating constitutional issues related to the Bill of Rights can be laid. An elementary teacher can influence his or her students to create a "children's" bill of rights. Consider these questions elementary teachers might ask: Do children have the same rights as adults? What are my rights in the classroom, the playground, at home? These kinds of questions, that should be raised and dealt with by elementary students, are emphasized in the material for elementary school students included in this chapter.

Middle school/junior high affords an opportunity to teach students to understand, apply, and evaluate provisions of the Bill of Rights. Through the use of case studies and other modes of instruction, middle school/junior high students can begin to realize how "alive" the Bill of Rights actually is and to apply their understanding to new and future interpretations. High school provides students with the opportunities to develop their knowledge of Bill of Rights topics and issues. Mock trials, moot court simulations, simulated congressional hearings, case studies, and role playing are all excellent ways of deepening understanding. Secondary school materials listed in this chapter exemplify the preceding teaching strategies and activities.

2. *The materials are published by small-scale publishers and non-profit educational agencies.* Many excellent materials are available through large-scale commerical textbook publishing companies that have sizable budgets to advertise and sell their products. The intent of this publication is to highlight equally exceptional products, but ones developed by non-profit educational agencies and agencies that do not advertise and market products on the scale of big commerical publishers.

3. *The materials included in this publication emphasize a variety of instructional strategies.* Understanding, applying, and evaluating Bill of Rights issues cannot be accomplished through lectures and recitation alone. Cooperative learning strategies, role playing, and case studies that include active participation by students can enhance the study of the Bill of Rights. Therefore, the materials selected for inclusion stress student involvement in the process of learning rather than requiring students to act merely as receptacles of information. It is not enough to ask students to know the contents of the Bill of Rights. Rather, they must begin to see it as an evolving tool, and understand how the tool operates in totally new situations. James Madison, as he contemplated what eventually became the Fourth Amendment, could never have imagined the possibilities of video cameras, electronic surveillance equipment, and a drug crisis; all of which have the capability of eroding what Madison saw as the right to be protected from unlawful searches and seizures. Unlike Madison, students

today and in the future must contemplate these new issues.

4. *The materials included in this publication represent three broad instructional formats:* (a) printed materials, including books, lessons, and curriculum packages; (b) video programs; and (c) poster sets. Just as instructional strategies must vary, so too must instructional formats. The various learning styles of students and teaching styles of instructors require that instructional materials used in a classroom exhibit more than one form. Therefore, the annotated lists in this chapter include a variety of curriculum materials that emphasize a variety of instructional formats.

In addition to items included in these three broad formats, two outstanding periodicals are highlighted. The *Bill of Rights in Action* (BRIA) and *Update on Law-Related Education* are included in this publication because they regularly feature lessons on Bill of Rights issues designed for students and teachers, K-12.

The citations for all materials included in the following annotated bibliography are listed in alphabetical order by title. Several citations included in this bibliography are also available through ERIC (Educational Resources Information Center). They are noted by an ED number at the end of the citation. Information about the ERIC database, and how to obtain items in it, is presented at the end of this chapter. Prices listed here are subject to change.

American Law Source Book (1989) by Pamela J. Brown, James A. Snyder, and Rick Mibrison.

This publication provides sources on American law which can be easily used by a secondary teacher on a unit or subject basis for any relevant part of a traditional curriculum. The materials selected and the method of presentation have been specifically designed for student use in the classroom. Leading cases in major areas of the law are presented in summary form for analysis and discussion by students. Where possible, cases with contrasting results are placed side-by-side, so the student can learn to distinguish between what is permissible and what is prohibited under the law. The purpose of this juxtaposition is to demonstrate that legal rights coexist with legal responsibilities. Following each section of cases is a set of discussion questions, a brief summary of the decision of the court, a commentary on the historical background and some of the important principles governing that area of the law, and a brief list of other significant or similar cases of interest.

Also included is an entire chapter devoted to instructional methods that can be successfully employed in teaching about the fundamental principles of American law and the dynamics of our legal system. In addition, there are other sections on subjects which will enable the teacher to obtain a better understanding of the operation of our legal system, e.g., "The Legal Profession in Today's Society" and a glossary of the most commonly used legal terms.

The text provides a bibliography of publications and materials which may be of assistance to teachers who are interested in locating additional sources. The text can be obtained by contacting the Young Lawyers Division of the American Bar Association, 750 N. Lake Shore Drive, Chicago, Illinois 60611, (312) 988-5555. Price: $15.00.

America's Conscience: The Constitution in Our Daily Life (1987) by the Anti-Defamation League of B'nai B'rith.

This educational program is designed to inform high school students of citizens' rights protected by the Constitution and Bill of Rights; educate students about the

importance and meaning of these rights; and sensitize students to the dangers of losing them. The material is divided into two sections. Activities 1—13 explore the Bill of Rights, and activities 14-20 show the importance of the 13th and 14th Amendments. The materials are designed to be used in sequence but lend themselves to use in a more flexible way. The kit is self-contained but certainly could be supplemented with additional research on the part of students. A glossary is included that contains all words that students are asked to define within the activities. This educational program can be obtained by contacting the Anti-Defamation League of B'nai B'rith, 823 United Nations Plaza, New York, New York 10017, (212) 490-2525. Price: $10.00.

The Bill of Rights (1990) by the National Archives and Records Administration of the United States.

This teaching unit is designed to help students of U.S. history, government, and economics to understand the process by which history is written and to develop analytical skills. The unit contains fifty reproductions of document-charts, photographs, letters, drawings, and posters—and a detailed teacher's guide. The materials deal with certain key issues of the period, governmental and political responses to these issues, and public attitudes. The teaching unit can be obtained by contacting SIRS, Inc., P.O. Box 2348, Boca Raton, Florida 33427-2348, 1-(800)-327-0513. Alaska and Florida call collect (407) 994-0079. Price: $40.00.

The Bill of Rights: A Law-Related Curriculum for Grades 4-6 (1986) by Fran Reinehr.

This educational package focuses on the individual and personal freedom as guaranteed by the U.S. Constitution and as interpreted by the courts—namely, the idea of fundamental rights as expressed through the concepts of liberty, justice, and equality. The materials are in two parts: student materials and a teacher's guide. The listed materials include readings, worksheets, hypothetical problems, and case studies. The teacher's guide contains goals and objectives for each of the ten lessons, points of law which explain the legal concepts involved in each lesson and which are intended as background information for the teacher, and explanations and recommended directions for each activity. The lessons have been designed for use either with or without drawing upon outside resources. The educational package can be obtained by contacting the Director of Law-Related Education, Nebraska State Bar Association, P.O. Box 81809, Lincoln, Nebraska 68501, (402) 475-7091. Price: $1.20; TE $1.25.

The Bill of Rights: A Law-Related Curriculum for High School Students (1988) by Steve Jenkins, Wayne Kunz, and Alan H. Frank.

This educational package includes twelve lessons on the Bill of Rights that cover topics such as freedom of speech, freedom of the press, fair trials, freedom of religion, the right to bear arms, due process of law, search and seizure, the Fifth Amendment, the Sixth Amendment, excessive bail and cruel and unusual punishment, and equal protection. Each lesson includes goals and objectives, teaching instructions, student materials, activities, and media resources. This compilation of lessons can be obtained by contacting the Nebraska State Bar Association, Law-Related Education Project, 635 South 14th Street, P.O. Box 81809, Lincoln, Nebraska 68501, (401) 475-7091. Price: $2.50.

The Bill of Rights: A Law-Related Curriculum for Primary Students (1986) by Wilma Boles.

This educational unit focuses on the individual and personal freedoms expressed in the Bill of Rights. Through a story format of an animal community, primary students will make decisions about important fundamental freedoms by considering conflicts in which the animals find themselves. Included in each of the nine lessons is a set of objectives, teacher instructions, stop and think questions, think and act, think and write, and alternative and supplemental activities. This educational unit can be obtained by contacting the Director of Law-Related Education, Nebraska State Bar Association, P.O. Box 81809, Lincoln, Nebraska 68501, (402) 475-7091. Price: $.85; TE $.65.

The Bill of Rights: Acting on Principle (1990) by the Virginia Commission on the Bicentennial of the United States Constitution and the Virginia Institute for Law and Citizenship Studies.

This educational program offers teachers an innovative strategy for teaching the Bill of Rights. The program encourages students to discuss and try to resolve rights-related issues; that is, actively interpreting the Bill of Rights in a local government setting.

Acting on Principle converts the classroom into a hypothetical community whose school board and municipal government must decide on a variety of public policies that involve making choices about the rights of citizens. Students take the roles of the council and board members and citizens with interests at stake in the proposed policies: gun control, drug testing, jail overcrowding, a smoking ban, control of the curriculum, AIDS notification, surveillance in the schools, and use of the schools for a bible study class. Acting out these roles within the context of local government, students work to accommodate the purposes of government to the protection of individual liberties. The program provides an approach to the teaching of constitutional law that focuses on Bill of Rights and 14th Amendment issues; focuses attention on the local government process, so often given inadequate attention in the curriculum; shows students the very real influence that individuals can bring to bear in the resolution of local issues, thereby encouraging participation in the democratic process; demonstrates the complexity that attends any discussion of rights issues—that rights can conflict with each other and with the aims of government—and to analyze how political and moral values can affect interpretation of the Bill of Rights; and provides an opportunity for students to experience the process by which issues are confronted and resolved. Students' involvement in this process requires public speaking, analysis of the issues, interpretation, and debate.

The program can be obtained by contacting the Virginia Institute for Law and Citizenship Studies, Virginia Commonwealth University, School of Education, 1015 West Main Street, Richmond, Virginia 23284-2020, (804) 367-1322. Price: Complimentary, but limited number available.

The Bill of Rights and You (1990) by Steve Jenkins, Linda Riekes, Roger Goldman, and Patricia C. McKissack.

This junior high/middle school text is about history and how that history affects our everyday lives. The text will help students to develop a new understanding of

the crucial relationship between the past and the present; develop problem-solving and critical-thinking skills that will enable them to explore important historical and contemporary issues and themes; develop a greater understanding of the historical origins, fundamental principles, and present-day applications of the Bill of Rights; recognize that the protection of the Bill of Rights depends upon active citizen involvement, and apply their understanding of the Bill of Rights to their rights and responsibilities as citizens. *The Bill of Rights and You, A Teacher's Resource Manual*, includes background information, teaching strategies, and help in using legal citations and fostering community and family involvement. The text and the resource manual can be obtained by contacting the Law and Citizenship Education Unit of the St. Louis Public Schools, 5183 Raymond, St. Louis, Missouri 63113, (800) 328-9352. Price: $8.25, Multiple: $5.96; TE $13.95.

Bill of Rights: Federalist and Anti-Federalist Positions (1990) by the South Carolina Bar Foundation.

This 60-minute video program for elementary students and teachers highlights a leading scholar who responds to in-depth questions by the executive producer, Jack C. Hanna. The scholar's input is accentuated by excellent teaching techniques demonstrated by master teachers. The final 15 minutes of the program features actors portraying scholars who teach about the Bill of Rights. It is the final 15 minute portion that teachers will find valuable to utilize with students, while teachers will benefit from the entire program. The video can be obtained by contacting the South Carolina Bar Foundation, 950 Taylor Street/P.O. Box 608, Columbia, South Carolina 29202-0608, (803) 799-4015. Price: $20.00.

Bill of Rights in Action (BRIA) by the Constitutional Rights Foundation.

This free newsletter is published several times a year by the Constitutional Rights Foundation (CRF). Each issue of *BRIA* provides in-depth coverage of an amendment. Lessons are designed for U.S. history, world history, and U.S. government emphasizing the particular amendment highlighted in each issue. BRIA also gives teachers suggestions for further reading, classroom activities, discussion, and hypothetical legal dilemmas. BRIA can be obtained by contacting CRF, 601 South Kingsley Drive, Los Angeles, California 90005, (213) 487-5590. Price: Free.

Blessings of Liberty, (1987) by the National Park Service.

This 16-minute video program is a chronicle of the creation of the Constitution and Bill of Rights and the basic rights and freedoms they promise all Americans. This program, produced by the National Park Service to Commemorate the Bicentennial of the Constitution, features many national historic sites where events leading to the signature of these two charters of freedom occurred. The video can be obtained by contacting the National Archives National Audio-visual Center, (800)-638-1300. Price: VHS $45.00.

Constitution Sampler: In Order To Form A More Perfect Lesson Plan (1988) by SPICE II classroom teachers for the Center for Research and Development in Law-Related Education (CRADLE).

The Mission of CRADLE is to encourage the development and dissemination

of innovative instructional materials which focus on the law, the legal process, and the fundamental principles on which the legal system is based. To this end, CRADLE annually sponsors the Special Programs in Citizenship Education (SPICE). This week-long institute involves teachers from throughout the nation. At the conclusion, participants develop and field test instructional materials which are then published and disseminated by CRADLE. This publication, therefore, represents the efforts of elementary and secondary educators from thirty-eight states and the District of Columbia.

This publication is organized by content according to constitutional issues to be taught. The Table of Lessons designates the theme or major concepts contained in each lesson and the instructional level intended by the author. Much of the material in this book is easily adaptable to a variety of grade levels; therefore, elementary lessons may be entirely appropriate for middle school instruction, and vice versa.

The lessons are organized in an easy-to-follow format beginning with an overview of the content, including a rationale for integrating it into the curriculum. Each lesson designates an instructional level and recommended length of instructional time. Student "handouts" and other instructional materials are identified along with step-by-step instructional procedures. A special section, Tips from the Teacher, offers suggestions based on the author's experience using the material in the classroom.

Users of the materials in this publication are encouraged to communicate their recommendations to CRADLE. A brief evaluation detailing successes, problem areas, and suggestions and insights would be most valuable for CRADLE and future SPICE participants. This publication can be obtained by contacting CRADLE, Wake Forest University School of Law, P.O. Box 7206, Reynolda Station, Winston-Salem, North Carolina 27109, (919) 759-5872. Price: $9.00. ED 301 529.

A Design for Liberty: The American Constitution (1987) by Liberty Fund, Inc.

This 28-minute video program, using pictures and quotations from the founding period of the United States, discusses the idea of liberty as it was understood by the revolutionary generation and how the concern for the preservation of liberty culminated in the writing of the Constitution in 1787. Among those heard from are Joseph Warren and John Adams of Massachusetts, David Ramsey of South Carolina, Richard Henry Lee of Virginia, and John Dickinson of Delaware.

The script was written by professor Forrest McDonald of the University of Alabama with the advice of Professor William B. Allen of Harvey Mudd College. The video can be obtained by contacting Modern Talking Picture Service, 5000 Park Street, N., St. Petersburg, Florida 33709, (800) 243-6877. Price: Free (On Loan Basis).

Equal Justice Under Law—A Series (1977) by Judicial Conference of the United States.

This video series highlights four landmark cases from the court of Chief Justice John Marshall. This nationally acclaimed series produced by WQED/Pittsburgh for PBS airing is designed to promote discussion and thought about the U.S. Constitution. Particular emphasis is given to the Supreme Court's reinforcement of the principles of separation of powers and federalism, as well as the specific constitutional prohibitions and limitations on the exercise of official authority. This judicial role is as important today as it was early in American history. A very complete teacher's guide written by Dr. E. Susanne Richert is also available. The four programs in this

video series are listed and described below.

Marbury v. Madison. This 1803 case established the Supreme Court's responsibility to review the constitutionality of acts of Congress. In the process, two great statesmen, President Thomas Jefferson and Chief Justice John Marshall confronted one another on the relative power of the judiciary.

McCulloch v. Maryland. In this unpopular decision, the Supreme Court dealt a great blow to a claim of state rights by striking down Maryland's attempt to tax a federally chartered bank. The decision for McCulloch enhanced Congressional power and reaffirmed the vitality of the federal government.

Gibbons v. Ogden. In this precedent-setting case, which raised the issue of states' authority to license steamboats in federal waters, Chief Justice John Marshall interpreted the Constitution to give the federal government the duty to determine the rules of commerce, thereby laying the foundation for an American common market more than a century before Europe had it.

United States v. Aaron Burr. Chief Justice Marshall presided over the trial of Aaron Burr. By strictly adhering to the Constitution's standards for determining guilt for treason, he stepped between Burr and death. The case established a precedent on the government's application of the treason charge.

Each video tape is 36 minutes long except *United States v. Aaron Burr,* which is 76 minutes long. The videos can be obtained by contacting WQED/Pittsburgh, 4802 Fifth Avenue, Pittsburgh, Pennsylvania 15213, (412) 622-1467. Price: $33.00 each.

Ever Changing, Ever Free (1974).

This fast-paced 11-minute video draws a parallel between the freedom of all living creatures within the constraints of nature and human freedom within a framework of governmental order. This Gold Award winner, in the International Film and Television Festival of New York, emphasizes how the U.S. Bill of Rights is a "living document," allowing for orderly changes to meet new conditions. The video can be obtained by contacting the National Audio-visual Center at (800)-638-1300. Price: 16mm $115.00; VHS $40.00.

The First Amendment: Free Speech and A Free Press (1985)
by Thomas Eveslage.

This curriculum guide is intended to encourage students to learn how everyone benefits when citizens and media exercise the constitutional rights of free speech and free press.

This curriculum guide for high school teachers reflects the thinking of 129 educators in 30 states who responded to a two-page questionnaire mailed in 1981. Besides background on free speech issues, the guide includes classroom activities, discussion questions and worksheets. Included in the guide are some questions, activities, resources, and topics that generally are covered in most units on the First Amendment. The topics are in order of importance to most teachers who reviewed the guide, but portions may be used as appropriate to specific courses. The broad approach to the First Amendment allows teachers flexibility while offering useful content for each section.

The guide can be obtained by contacting the School of Communications and

Theater, Temple University, Philadelphia, Pennsylvania 19122, (215) 787-1905. Price: $4.50. ED 261 929.

From the School Newsroom to the Courtroom (1989) by the Constitutional Rights Foundation.

What had begun in a small high school newsletter in Missouri, with a few ideas for feature articles, has now become a matter of national importance. The case of *Hazelwood School District v. Kuhlmeier* has significantly affected First Amendment law and the rights and obligations of students and administrators across the United States.

The five lessons in this lesson packet ask students to consider the facts of the "Hazelwood" case and reach a decision in a process modeled on that used by the U.S. Supreme Court. The lesson packet contains two classroom simulation activities, a Supreme Court hearing, and a school board policy debate. They each raise issues about student rights of free speech in public schools; thus while they overlap with each other, they are complementary. The lesson packet can be obtained by contacting the Constitutional Rights Foundation, 601 South Kingsley, Los Angeles, California 90005, (213) 487-5590 or 407 South Dearborn, Suite 1700, Chicago, Illinois 60605, (312) 663-9057. Price: $4.95.

Lessons on the Constitution (1985) by John J. Patrick and Richard C. Remy.

Project '87, a joint effort of the American Historical Association and the American Political Science Association, is the sponsor of this text for students, teachers, and curriculum developers. The *Lessons* are an integral part of Project '87's program on behalf of the Constitution's Bicentennial. They are meant to be supplementary instructional materials that can be easily adapted by teachers for use by their students in classes on civics, American history, and American government. Additionally, this book is a resource for other organizations and individuals engaged in efforts to enhance teaching about the Constitution.

Sixty lessons are included in this text which is divided into five chapters. Chapter One, entitled "Documents of Freedom," includes the U.S. Constitution and selected *Federalist Papers*. Chapter Two, entitled "Origins and Purposes of the Constitution," includes twelve lessons, one of which discusses the decisions made during the debate over the Bill of Rights. Chapter Three, entitled "Principles of Government in the Constitution," includes fourteen lessons, of which five are directly related to civil liberties and rights. Chapter Four, entitled "Amending and Interpreting the Constitution," includes fourteen lessons, of which nine lessons relate to Bill of Rights issues. The final chapter, Chapter Five, entitled "Landmark Cases of the Supreme Court," includes twenty lessons, all of which relate to Constitutional issues raised in the Bill of Rights. This text can be obtained by contacting the Social Science Education Consortium (SSEC), 3300 Mitchell Lane, Boulder, Colorado 80301-2272, (303) 492-8154. Price: $13.00. ED 258 891.

Liberty and Order in Constitutional Government: Ideas and Issues in the Federalist Papers (1989) by John J. Patrick.

This publication provides a brief introduction to core ideas of constitutional government in the United States, which are treated in depth in *The Federalist* by

Alexander Hamilton, James Madison, and John Jay. The Anti-Federalist perspective is also presented, because without it *The Federalist* can neither be fully understood nor appreciated. Both sides to the great debate of 1787-1788 have shaped our American political tradition, and the ideas and issues they addressed long ago are interesting and relevant to citizens today.

This booklet presents information and ideas that can be used in a Federalist/Anti-Federalist Forum—an open discussion on questions and issues about constitutional government in the United States. The primary focus of the Forum proposed in this publication is a perennial problem of constitutional government: how to adequately provide both liberty and order for all individuals living under a government's authority.

The Federalist/Anti-Federalist Forum of this publication is similar in spirit and style to the Jefferson Meeting on the Constitution, a program of the Jefferson Foundation of Washington, DC and the Virginia Jefferson Association. Like the Jefferson Meeting, the Forum is designed to promote reflective thinking, deliberation, and discourse about ideas and issues of constitutional government in the United States. Unlike the Jefferson Meeting, which is concerned with proposed amendments to the Constitution of the United States, this Forum addresses alternative positions on a fundamental question in political theory and practice: how to establish a constitutional government that provides both liberty and order, freedom and stability. Furthermore, this Forum emphasizes acquisition and application of knowledge about core ideas in *The Federalist* and essays of the Anti-Federalists.

The "Guide for Teachers and Forum Leaders" in the Appendix provides directions and suggestions for use of the booklet and management of the Federalist/Anti-Federalist Forum. It is expected that teachers and Forum leaders will modify suggestions presented in this guide in order to meet the interests and needs of different groups of students and participants in this program.

This volume can be obtained from the publisher, the Virginia Jefferson Association, P.O. Box 1463, Richmond, Virginia 23212. Price: Free, while still available. ED 313 315.

The Living Constitution Poster Series (1988) by Howard J. Langer, editor, the Anti-Defamation League of B'nai B'rith.

This series includes fifteen posters which highlight constitutional and Bill of Rights issues. The series is appropriate for classes in American history, American government, civics, problems in American democracy, world history, political science, law, economics, and current affairs. Junior high, senior high, and college level students will find the posters intriguing. Teachers can develop entire lessons surrounding each of the fifteen posters. The series can be obtained by contacting the Anti-Defamation League of B'nai B'rith, 823 United Nations Plaza, New York, New York 10017, (212) 490-2525. Price: $24.95, plus $2.50 for shipping and handling.

More than Mere Parchment Preserved Under Glass: The United States Constitution: Cases and Materials (1987) by Eric S. Mondschein, E. Rick Miller, Jr., and Beth A. Lindeman.

This book is designed for use in the secondary school social studies program, primarily in the areas of American history and American studies. Political science and/or law electives that focus on the evolution of the Supreme Court could likewise

use the materials. The book consists of ten landmark case studies that the Supreme Court heard, examined, and struggled with from 1803 to 1974. They are cases brought to the highest court by real people with real problems. Historical setting is examined and significant portions of the actual decisions are included. Suggested teaching strategies are shared along with a chronological law and American history table, a glossary of legal terms, the United States Constitution, and a selected bibliography. Teachers can find, easily amend, and adapt these materials in a variety of creative fashions.

The real value of this publication will be realized as teachers and students work together to put key Supreme Court cases into the students' expanding view of constitutional history and the role of constitutional law, in the past, present, and the future. The book facilitates the use of case study methods. Students are given the opportunity to determine the facts, state the issues, and understand the decision relevant to each case. In addition, students will acquire the ability to understand the social, political and economic environment out of which the cases emerged and analyze and assess the impact of the decision upon the American society. This publication can be obtained by contacting the Law, Youth and Citizenship Project, New York State Bar Association, One Elk Street, Albany, New York 12207, (518) 474-1460. Price: $8.95.

The National Repository Catalog of Teacher Developed Lesson Plans on Law and the Constitution (1989) by the Center for Research and Development in Law-Related Education (CRADLE).

CRADLE, in conjunction with Wake Forest University School of Law, has been designated by the Commission on the Bicentennial of the United States Constitution and Bill of Rights as a repository for teacher developed lesson plans and materials on law and the Constitution. The repository collects and makes available teacher developed and tested lesson plans. The catalog and supplement are produced three times a year. The catalog is divided into three divisions: elementary school lesson plans, grades pre-K-4; middle school lesson plans, grades 5-8, and high school lesson plans, grades 9-12. Each lesson plan lists the code number, grade level, author, title, and a brief description of the lesson plan.

Teachers are encouraged to submit lessons plans for inclusion in the repository. If a teacher submits a lesson plan he/she may receive ten free lesson plans from the repository, otherwise, there is a minimal charge for each lesson. The catalog, with lesson plan entry forms and order forms for lessons can be obtained by contacting CRADLE, Wake Forest University School of Law, P.O. Box 7206, Reynolda Station, Winston-Salem, North Carolina 27109, (919) 759-5872. Price: Free.

The Road to Brown (1989) by William A. Elwood, producer and writer.

This film depicts the story of segregation and the brilliant legal assault on it which helped launch the Civil Rights movement. It is also a moving and long overdue tribute to a daring but little known Black lawyer, Charles Houston, "the man who killed Jim Crow." Houston, a former editor of the Harvard Law Review and Dean of Howard University Law School, realized that an attack on the legal basis of segregated education would undermine the whole Jim Crow social structure. The film includes clips from a film Houston shot in South Carolina in 1934 documenting separate but unequal schooling. John Hope Franklin, Juanita Mitchell and Jack Bass recall how Houston, eschewing the limelight himself, energized a generation of Black jurists to

wage the battle against Jim Crow. Houston died in 1950 at the age of 54, just as his long legal campaign was reaching its climax. The film is a taut constitutional detective story, deftly untangling the cases which led to the landmark *Brown v. Board of Education* decision. The video can be obtained by contacting Resolution Inc./California Newsreel, 149 Ninth Street/420, San Francisco, California 94103, (415) 621-6196. Price: $75.00-Rent; $295.00-Purchase.

Shaping American Democracy 1990 by the Citizenship Law-Related Program for the Schools of Maryland, Inc. of the Maryland State Bar Association, the Maryland State Education Department and the Law, Youth and Citizenship Program of the New York State Bar Association and the New York State Education Department.

The format of this resource guide is designed to assist teachers and students in the study of key Supreme Court cases. Each of the ninety-three cases is presented with facts, issues, and the decisions of the court. Secondly, twenty-five commonly used textbooks were analyzed to determine the extent to which Supreme Court cases are cited. To assist teachers, the first section includes a table to indicate which cases are cited in which textbook. The table is developed topically, according to the major concept around which the cases have been categorized. Specific legal case citations are also included. The second section contains the bibliography of coded textbooks. The third section provides a brief synopsis of the ninety-three Supreme Court cases. Since they are listed by category, teachers or students can review preceding or following cases to consider changes in precedents and also gain a quick reference for further legal research. The four sections include a number of strategies and activities highlighting the case study method. Teachers are encouraged to adopt or adapt these single activities to fit their students' needs. The appendices include a copy of the U.S. Constitution and Bill of Rights and subsequent amendments, and a glossary of legal terms. This resource guide can be obtained by contacting the Law, Youth and Citizenship Project, New York State Bar Association, One Elk Street, Albany, New York 12207, (518) 474-1460. Price: $8.95.

To Preserve These Rights: The Bill of Rights Exhibit (1989) by the Pennsylvania Humanities Council.

This display consists of three kiosks. Each kiosk has four mounted posters. Each section consists of a single sheet of corrugated board with three folds and one glued seam. Each panel explains a particular set of rights and illustrates those rights through the text of relevant amendments, captioned photos, drawings, and quotations. The final panel (which focuses on civic responsibility) asks the exhibit visitor: What can we as Americans do to preserve these rights?

A companion publication, *To Preserve These Rights Users Guide*, has been developed to augment the exhibit. The guide looks at the historical development of the concept of rights and liberties, and at the importance of the judicial system in upholding the Constitution. It suggests related educational activities and provides bibliographies for both student and adult readers.

The display and Users Guide will enhance any classroom's or school's celebration of the Bill of Rights. The display can be obtained by contacting Susan Halsey, The Pennsylvania Humanities Council, 320 Walnut Street, Suite 305, Philadelphia, Pennsylvania 19106, (215) 925-1005. Price: $100.00-Unmounted; $150.00-Mounted.

To Salute Our Constitution and the Bill of Rights: 200 Years of American Freedom Volume I: Grades 1-3 and Volume II: Grades 4-6 (1987) by Connie S. Yeaton and Karen Trusty Braeckel.

These two elementary texts emphasize using the newspaper to discover how the Constitution and Bill of Rights work. The first section of both texts consists of a set of model lessons demonstrating the use of various parts of the newspaper to study the Constitution. They include techniques and sample articles to show how a teacher can use current affairs to make this great document of the 18th century relevant to 20th-century students.

Each lesson is based on a specific part of the newspaper and is outlined in a step-by-step procedure that includes a sample newspaper item to show how it works. All questions are generic, so that teachers can use them with current newspaper articles. Following each question is a specific answer based on the sample item.

Several of the lessons suggest the use of the "DECISION T" activity sheet. This is a device to help children test possible solutions to problems and become better problem-solvers.

The second section of each text helps teachers introduce the United States Constitution and Bill of Rights to elementary students. The lessons take children on a journey, beginning with their present-day experience, back to the time when the Constitution was written. By first examining today's problems, it is easy for young people to understand the need that existed for a written framework of government.

The lessons are outlined in a step-by-step procedure. Materials needed are listed at the beginning of each plan. Activity sheets to be copied for students appear throughout and the appendices contain helpful background information.

A mixture of materials and techniques are used throughout the lesson plans. Newspapers, library books, and filmstrips are integrated into the theme. Role-playing, games, puzzles and mock hearings actively involve students. Teachers are highly encouraged to use field trips, guest speakers and resource persons as enrichment. After students have participated in these activities, they will appreciate the birthday party for the Constitution that culminates the unit.

Both texts can be obtained by contacting the Indianapolis Star and News, P.O. Box 145, Indianapolis, Indiana 46206-0145, (317) 633-9005. Price: $6.95. ED 280 759.

To Secure the Blessings of Liberty: Rights and the Constitution (1989) by Russell L. Hanson and W. Richard Merriman, Jr.

This discussion guide is one in a series on constitutional reform issues developed by the Jefferson Foundation as part of the Jefferson Meeting on the Constitution project. The guide examines different kinds of rights: the rights of individuals accused of committing a crime, political rights, and economic rights. The guide can be used to produce two different types of Jefferson Meeting debates about rights. The discussion guide can be obtained by contacting the Jefferson Foundation, 1529 18th Street NW, Washington, D.C. 20036, (202) 234-3688. Price: $.75.

The U.S. Constitution (1987) by the Agency for Instructional Technology.

This six-part video series, featuring Bill Moyers, is designed to show students that the Constitution is an enduring and fundamental document that can change and is changed as a result of the need to resolve conflict and because of changing political,

economic, and social situations. Four of the six videos involve Bill of Rights issues. *Limited Government and the Rule of Law* depicts the U.S. Constitution as a provider of power sufficient to rule according to limits established by law. Ongoing issues involve the balance of power and liberty under law. The program on *Federalism* treats issues on rights pertaining to the 10th and 14th Amendments. This program was a Gold Award Winner, International Film and Video Festival of New York, 1987. *Freedom of Expression* deals with the constitutional right that raises ongoing questions about security and liberty. *Equal Protection of the Laws* explains how after the Civil War the American ideal of equality under the law was embodied in the 14th Amendment to the Constitution. These four videos plus the other two in the series and the *Teacher's Guide* written by John J. Patrick (who also served as chief content consultant and instructional designer in development of the six video programs) can be obtained by contacting the Agency for Instructional Technology (AIT), Box A, Bloomington, Indiana, 47402, (800) 457-4509 or (812) 339-2203. Price: $180.00 for each video program; $525.00 for the VideoKit; $1.50 for the Teacher's Guide. ED 286 820.

U.S. Supreme Court Decisions: A Case Study Review for U.S. History and Government (1989) by Project P.A.T.C.H. of the Northport-East Northport U.F.S.D. and the Law, Youth and Citizenship Program of the New York State Bar Association and State Education Department.

This constitutional casebook was prepared by 11th-grade students. It provides junior high/middle and high school students and teachers with a summary review of 51 cases that can enhance any U.S. History and Government course. Appendix A includes answers to the pre-post evaluation quiz, a glossary, and a format for written certiorari briefs. Appendix B includes the Constitution of the United States and the Bill of Rights. The text can be obtained by contacting the Law, Youth and Citizenship Project, New York State Bar Association, One Elk Street, Albany, New York 12207, (518) 474-1460. Price: $6.00.

Update on Law-Related Education by the American Bar Association Special Committee on Youth Education for Citizenship.

This journal, published three times a year, helps elementary, middle school and high school teachers educate students about the law and the legal issues. Although it is not specifically designed to center around the Bill of Rights, many of the lessons included in each issue are based upon cases that have a direct relationship to Bill of Rights issues. Back issues and subscription information can be obtained by contacting the American Bar Association, 541 North Fairbanks, Chicago, Illinois 60611, (312) 988-5735. Price: $12.95 for 1 Year; $21.95 for 2 Years; $29.95 for 3 Years.

We the People... (1987) by the Center for Civic Education.

The *We the People . . .* curriculum is available at three instructional levels: upper elementary, middle school and high school. At each level, a variety of suggested teaching strategies is employed to encourage student participation and involvement. Illustrations in the texts highlight and enhance comprehension of the key concepts. The curriculum examines the basic philosophical ideas that influenced the development of the Declaration of Independence, the Constitution, and the Bill of Rights; the evolution of constitutional government and the historical experiences that

influenced the development of the Declaration of Independence, the Constitution, and the Bill of Rights; the principal issues and debates of the Philadelphia Convention, and the struggle between the Federalists and Anti- Federalists over ratification; the organization of the new government and the development of judicial review; the protection of freedom of religion, freedom of expression, due process of the law, equal protection of the laws, and the right to vote; and the role of the citizen in our constitutional democracy and the rights and responsibilities of citizenship.

A special Bill of Rights edition entitled *With Liberty and Justice For All* was published for the 1991-1992 school year. The text does not limit its attention solely to the first ten amendments to the Constitution, but deals with the "extended Bill of Rights; that is, it also directs attention to the protections of individual rights included in the body of the original Constitution and amendments subsequent to the Bill of Rights. It concludes with attention to the broader concept of human rights. Rather than focusing on each of the many specific rights contained in the Constitution, the book focuses upon several overarching topics which encompass the most important of these rights.

The curriculum also introduces students to an analytic framework or set of intellectual tools to assist them in thinking critically about constitutional issues. These "tools of the mind" help students develop reasoned and responsible positions on the important topics presented in the program. Cooperative learning strategies, such as simulations, debates, mock trials, and government hearings, are used.

The combined focus of a broader conceptual context and an active learning methodology make a unique pedagogical contribution. It provides young people with both the knowledge base and the personal and group interaction skills required for successful social and political participation in our constitutional democracy.

The *We the People . . .* curriculum can be used in conjunction with the National Bicentennial Competition. The competition, designed to simulate a congressional hearing, is held before a panel of judges. The entire class works together as a team, so that all students participate rather than a select few. Classes divide into groups, each making a brief presentation and responding to questions on one of the topics covered in the instructional program.

At the high school level, competitions are held at the congressional district, state, and national levels. Classes that win the district competition go on to the state contest. Winning state teams compete each spring in the national finals held in Washington, D.C.

The texts can be obtained by contacting the Center for Civic Education, 5146 Douglas Fir Road, Calabasas, California 91302, (818) 340-9320. Price: Upper-Elementary, a classroom set is $130.00, the Teacher's Edition is $5.00, Each Copy-$4.20; Middle School classroom set-$140.00, Teacher's Edition is $4.50, Each Copy-$4.50; High School classroom set-$150.00, Teachers Edition- $4.50, Each Copy-$5.00. ED 292 692.

We the People (1989) by the Constitutional Rights Foundation.

In cooperation with the Young Lawyers Section of the Chicago Bar Association and the Chicago Schools, the Constitutional Rights Foundation has developed a set of 15 interactive lessons for junior high school students. The lessons are designed to fit into existing curriculum. The activities are devised as exemplary lessons to infuse the study of the Constitution and Bill of Rights into U.S. History and government

classes. The lessons are intended for use with a resource person to provide realism and positive role models. Each lesson includes specific suggestions for the type of resource person and the activities in which they can participate. The materials encourage inquiry and critical thinking, so that teachers can build support for democratic values while at the same time developing skills needed for effective citizens. The We the People lessons can be obtained by contacting the Constitutional Rights Foundation, 407 South Dearborn, Suite 1700, Chicago, Illinois 60605, (312) 663-9057. Price: $12.50. ED 301 502.

Materials Available Through ERIC

Several items in the annotated bibliography (Chapter 7) and the References (at the end of this volume) can be obtained through ERIC. These items in the ERIC database can be recognized by the ED numbers that are printed at the end of the annotations in the bibliography and at the end of the citations in the References. What is ERIC? How can Bill of Rights materials in the ERIC database be obtained?

ERIC (Educational Resources Information Center) is a nationwide educational information system operated by the Office of Educational Research and Improvement of the U.S. Department of Education. ERIC documents are abstracted monthly in ERIC's *RIE (Resources in Education)* index. *RIE* indexes are available in more than 850 libraries throughout the country. These libraries may also have a complete collection of ERIC documents on microfiche for viewing and photocopying.

ERIC documents may be purchased from the ERIC Document Reproduction Service (EDRS), 7420 Fullerton Road, Suite 110, Springfield, Virginia 22153-2852, in either microfiche (MF) or paper copy (PC). The telephone number is (703) 440-1400. The FAX number is (703) 440-1408. When ordering, be sure to include the ED number, specify either MF or PC, and enclose a check or money order. EDRS also provides a toll free number (800-443-3742) for customer service and phone orders.

The ERIC documents included in this publication are merely a few of the many Bill of Rights curriculum materials that can be found in the ERIC database. These items exemplify the large pool of constitutional and Bill of Rights resources that can be obtained through ERIC. Additional resources on the Bill of Rights can be found by searching the monthly RIE index using the partial list of "Bill of Rights" descriptors on the next page. These descriptors may also be used to do a computer search of the ERIC database.

List of ERIC Descriptors on the Bill of Rights

Academic Freedom
Bill of Rights
Children's Rights
Citizenship
Citizenship Education
Citizenship Responsibility
Citizen Participation
Citizen Role
Civics
Civil Disobedience
Civil Liberties
Civil Rights

Civil Rights Legislation
Constitutional History
Constitutional Law
Controversial Issues
Court Judges
Court Litigation
Criminal Law
Demonstrations (Civil)
Due Process
Equal Education
Equal Protection
Freedom of Speech
Intellectual Freedom
Justice
Laws
Law-Related Education
Legal Education
Parents Rights
Privacy
School Law
Search and Seizure
Sex Discrimination
Student Rights
Teacher Rights
Voting Rights

Materials Available From the ADL

Elsewhere in this resource section are described two specific materials on constitutional issues that are available from the ADL. One, *America's Conscience*, is a set of student activity sheets and the other is a poster series on *The Living Constitution*. In addition, the ADL has two videos on Bill of Rights issues. One is *Democracy and Rights* dealing with the "Little Rock Nine," Black students who integrated Little Rock Central High School. The second video is *Supreme Court's Holy Battles*, on the issue of church and state. The ADL has available books and pamphlets on related rights issues.

The League's materials embrace a wide range of subject matter available for grade levels from kindergarteners to adults.

Some subjects covered by ADL materials fall in the following categories:

Political and Social Issues
Prejudice and Discrimination
Multi-Cultural Education
Blacks
Hispanics
Native Americans
Asian Americans
The Holocaust
Israel and the Middle East
Anti-Semitism
Women's Studies
Jews and Judaism

Formats vary considerably, depending on the specific audience. ADL materials on the Holocaust, for example, include a range of books on virtually every aspect of that tragedy. In addition, there is a poster series, a history of the Holocaust in newspaper format, bibliographies, an atlas, poetry, films, curriculum guides, and videos.

For additional information on ADL materials, please contact Publications Department, Anti-Defamation League, 823 United Nations Plaza, New York, N.Y. 10017. Please indicate the subject matter you are interested in.

APPENDICES

1. Constitution of the United States of America.
2. Table and Index of Supreme Court Cases.

CONSTITUTION OF THE UNITED STATES

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Article I.

Section 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

[Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of Free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.]*The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

Section 3. The Senate of the United States shall be composed of two Senators from each State, [chosen by the Legislature thereof,]** for six Years; and each Senator shall have one Vote.

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; [and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.]***

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

*Changed by section 2 of the Fourteenth Amendment.
**Changed by the Seventeenth Amendment.
***Changed by the Seventeenth Amendment.

The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Section 4. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

The Congress shall assemble at least once in every Year, and such Meeting shall be [on the first Monday in December,]* unless they shall by Law appoint a different Day.

Section 5. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

Section 6. The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

Section 7. All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the

*Changed by section 2 of the Twentieth Amendment.

Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Section 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than Two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards and other needful Buildings; —And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the

United States, or in any Department or Officer thereof.

Section 9. The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

No Bill of Attainder or ex post facto Law shall be passed.

No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

No Tax or Duty shall be laid on Articles exported from any State.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

Section 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

Article II.

Section 1. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows:

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

[The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of

Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.]*

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of the President; neither shall any person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

[In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.]**

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation;—"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

Section 2. The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

Section 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and

*Superseded by the Twelfth Amendment.
**Modified by the Twenty-Fifth Amendment.

other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

Section 4. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

Article III.

Section 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States; between a State and Citizens of another State;—between Citizens of different States—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment; shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Section 3. Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

Article IV.

Section 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State; And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Section 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States. A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

[No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.]*

Section 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Section 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

Article V.

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One Thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of it's equal Suffrage in the Senate.

Article VI.

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

*Superseded by the Thirteenth Amendment.

★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★

Article VII.

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

Done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth In Witness whereof We have hereunto subscribed our Names,

Go. Washington—Presidt.
and deputy from Virginia

New Hampshire
John Langdon
Nicholas Gilman

Massachusetts
Nathaniel Gorham
Rufus King

Connecticut
Wm. Saml. Johnson
Roger Sherman

New York
Alexander Hamilton

New Jersey
Wil: Livingston
David Brearley
Wm. Paterson
Jona: Dayton

Pennsylvania
B Franklin
Thomas Mifflin
Robt Morris
Geo. Clymer
Thos. FitzSimons
Jared Ingersoll
James Wilson
Gouv Morris

Delaware
Geo: Read
Gunning Bedford jun
John Dickinson
Richard Bassett
Jaco: Broom

Maryland
James McHenry
Dan of St Thos. Jenifer
Danl Carroll

Virginia
John Blair—
James Madison Jr.

North Carolina
Wm. Blount
Richd. Dobbs Spaight
Hu Williamson

South Carolina
J. Rutledge
Charles Cotesworth Pinckney
Charles Pinckney
Pierce Butler

Georgia
William Few
Abr Baldwin

Attest William Jackson Secretary

AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES OF AMERICA

ARTICLES IN ADDITION TO,
AND AMENDMENTS OF,
THE CONSTITUTION
OF THE UNITED STATES
OF AMERICA,
PROPOSED BY CONGRESS,
AND RATIFIED BY
THE SEVERAL STATES,
PURSUANT TO THE
FIFTH ARTICLE OF THE
ORIGINAL CONSTITUTION.

96

★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★

Amendment I.*

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment II.

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Amendment III.

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Amendment IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Amendment VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed; which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

Amendment VII.

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

*The first ten Amendments (Bill of Rights) were ratified effective December 15, 1791.

Amendment VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment IX.

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

Amendment X.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Amendment XI.*

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

Amendment XII.**

The Electors shall meet in their respective states, and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice- President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. [And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President—]*** The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice- President of the United States.

*The Eleventh Amendment was ratified February 7, 1795.
**The Twelfth Amendment was ratified June 15, 1804.

***Superseded by section 3 of the Twentieth Amendment.

Amendment XIII.*

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

Amendment XIV.**

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

*The Thirteenth Amendment was ratified December 6, 1865.
**The Fourteenth Amendment was ratified July 9, 1868.

★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★

Amendment XV.*

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

Amendment XVI.**

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

Amendment XVII.***

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: Provided, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

Amendment XVIII.****

[**Section 1.** After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

Section 2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.]

*The Fifteenth Amendment was ratified February 3, 1870.
**The Sixteenth Amendment was ratified February 3, 1913.
***The Seventeenth Amendment was ratified April 8, 1913.
****The Eighteenth Amendment was ratified January 16, 1919. It was repealed by the Twenty-First Amendment, December 5, 1933.

Amendment XIX.*

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

Congress shall have power to enforce this article by appropriate legislation.

Amendment XX.**

Section 1. The terms of the President and Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

Section 2. The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.

Section 3. If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

Section 4. The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

Section 5. Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

Section 6. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission.

Amendment XXI.***

Section 1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

Section 2. The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

Amendment XXII.****

Section 1. No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once. But this Article shall not apply to any person holding the Office

*The Nineteenth Amendment was ratified August 18, 1920.
**The Twentieth Amendment was ratified January 23, 1933.
***The Twenty-First Amendment was ratified December 5, 1933.
****The Twenty-Second Amendment was ratified February 27, 1951.

of President when this Article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this Article becomes operative from holding the office of President or acting as President during the remainder of such term.

Section 2. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.

Amendment XXIII.*

Section 1. The District constituting the seat of Government of the United States shall appoint in such manner as the Congress may direct:

A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a State; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

Amendment XXIV.**

Section 1. The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

Amendment XXV.***

Section 1. In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

Section 2. Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

Section 3. Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

Section 4. Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority

*The Twenty-Third Amendment was ratified March 29, 1961.
**The Twenty-Fourth Amendment was ratified January 23, 1964.
***The Twenty-Fifth Amendment was ratified February 10, 1967.

of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.

Amendment XXVI.*

Section 1. The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

*The Twenty-Sixth Amendment was ratified July 1, 1971.

Table and Index of Supreme Court Cases

The following list of 42 Supreme Court cases represents cases which have been mentioned within the pages of this book. The cases are listed in alphabetical order and include a citation. The brief synopsis that follows each citation explains in general terms the facts and significance of each case. The page number at the end of the synopsis refers to the location of the case within Chapters 1-7 of this book.

An explanation of Supreme Court citations is provided below. Official presentations of Supreme Court decisions and opinions are included in a series of volumes, *United States Reports*, published by the U.S. Government Printing Office. There also are several unofficial versions of Supreme Court opinions such as (1) *United States Law Week*, published by the Bureau of National Affairs; (2) *Supreme Court Reporter*, published by West Publishing Company; and (3) *United States Supreme Court Reports, Lawyers' Edition*, published by Lawyers Cooperative Publishing Company. However, the official record in *United States Reports* is generally cited.

A Supreme Court case citation includes the following information, in order: (1) the name of the parties to the case, (2) the volume of *United States Reports* in which the decision appears, (3) the beginning page number on this case in the volume, and (4) the year the decision was made. For example, *California v. Greenwood*, 476 U.S. 207 (1986) means that the Supreme Court decision and opinion in the case of California against Greenwood may be found in Volume 476 of *United States Reports* beginning on page 207. The case was decided in 1986.

Before 1875, official reports of Supreme Court cases were cited with the names of the Court reporters. Thus, these names (full or abbreviated) appear in the citations for those years.

***Abrams v. United States*, 250 U.S. 616 (1919)**

This 7-2 decision was one of the earliest seditious speech cases. The Court upheld the convictions of five Russian-born immigrants for writing, publishing, and distributing in New York two allegedly seditious pamphlets criticizing the U.S. Government for sending troops into Russia in 1918. The Court stated, "the plain purpose of their propaganda was to excite, at the supreme crisis of war, disaffection, sedition, riots, and, as they hoped, revolution in this country for the purpose of embarrassing and if possible defeating the military plans of the [U.S.] Government in Europe." (p. 14)

***Barron v. Baltimore* 7 Pet. 243 (1833)**

In this unanimous decision, Chief Justice Marshall concluded that the limits on governmental power expressed in the Bill of Rights applied only to "the government created by the instrument" [federal government] and not to "the distinct governments" [state governments]. The Court rejected the effort of a wharf owner to apply the Fifth Amendment to force the city of Baltimore to compensate him for the value of his wharf, which he claimed had become useless as a result of city action. (p. 45)

***Betts v. Brady*, 316 U.S. 455 (1942)**

In this 6-3 decision, the Court asserted that the 14th Amendment's due process clause does not require states to supply defense counsel to defendants too poor to employ their own attorney. This decision was reversed in *Gideon v. Wainwright* (1963). (p. 14)

***Brandenburg v. Ohio*, 395 U.S. 444 (1969)**

In a unanimous decision, the Court reversed the conviction of Brandenburg, the leader of a Ku Klux Klan group, who invited a newsman and photographer to film a Klan rally. Parts of the film were subsequently broadcast both locally and nationally which showed Brandenburg asserting that "if our President, our Congress, our Supreme Court, continues to suppress the white Caucasian race, it's possible that there might have to be some

revengence [sic] taken." The Court held that a state may not forbid or limit the advocacy of the use of force or the violation of the law except in situations where such advocacy constitutes incitement to imminent lawless action. (p. 14)

***Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954)**

In this unanimous decision, the Court reversed *Plessy v. Ferguson* (1896) by declaring that separate public schools for Black and white students were inherently unequal. State-sanctioned segregation in public schools therefore violated the equal protection guarantee of the 14th Amendment. The ruling also led to the abolition of state-sponsored segregation in other public facilities. (pp. 14, 73)

***California v. Greenwood*, 476 U.S. 207 (1986)**

In this 6-2 decision, the Court asserted that the "reasonable expectation to privacy" was not extended to the sidewalk or street where, in full public view, Greenwood placed his garbage. Justice White, writing for the majority concluded that Greenwood exposed his garbage to the public sufficiently to defeat his claim to Fourth Amendment protection. (p. 50)

***Carroll v. United States*, 267 U.S. 132 (1925)**

In this 7-2 decision, the Court extended the scope of permissible searches which could be conducted without a warrant. Warrantless searches of automobiles, when there exists a reasonable suspicion of illegal actions, are permissible for federal agents. (p. 49)

***Chicago, Burlington & Quincy Railroad Co. v. Chicago*, 166 U.S. 226 (1897)**

In this 7-1 decision, the Court declared that the Fourteenth Amendment guarantee of due process requires a state to provide just compensation to the property owner when it takes private property for public use. (pp. 45, 47)

***Chimel v. California*, 395 U.S. 752 (1969)**

In this 6-2 decision, the Court narrowed the limits of permissible searches conducted without a warrant incident to lawful arrest. The Court asserted that police may search only the immediate area around the suspect from which he or she could obtain a weapon or destroy evidence. But a person's entire dwelling cannot be searched merely because he/she is arrested there. (p. 49)

***DeJonge v. Oregon*, 299 U.S. 353 (1937)**

In this unanimous decision reversing DeJonge's conviction, the Court recognized that the right to assembly was on an equal basis with the rights of speech and press, and that the First Amendment guarantee of freedom of assembly was applicable to the states through the due process clause of the 14th Amendment. The First Amendment guarantee of the freedom of peaceable assembly prohibits a state from convicting a person under its criminal syndicalism act for organizing and participating in a meeting at which no illegal action was discussed, even if the meeting was held under the auspices of an association which had as its goal the overthrow of the federal government. (p. 14)

***Dennis v. United States*, 341 U.S. 494 (1951)**

In this 6-2 decision, the Court upheld convictions under the Smith Act of 1940 for speaking and teaching about communist theory and advocating the forcible overthrow of the government. Communist Party members challenged these convictions as abridgments of First Amendment rights. (pp. 14, 35-36)

★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★

***Engel v. Vitale*, 370 U.S. 421 (1962)**

In this 6-1 decision, the Court asserted that by "using its public school system to encourage recitation of the Regents' Prayer, the State of New York has adapted a practice wholly inconsistent with the Establishment Clause." The majority opinion held that the Establishment Clause must "at least mean that in this country it is no part of the business of government to compose official prayers for any group of the American people to recite as part of a religious program carried on by government." (pp. 54, 56, 60-62)

***Gibbons v. Ogden* 9 Wheat. 1 (1824)**

In this unanimous decision the Court interpreted the power of Congress to regulate interstate commerce very broadly. Thus, this case laid foundations for later interpretations giving Congress broad power to regulate business activities. (p. 69)

***Gideon v. Wainwright*, 372 U.S. 335 (1963)**

In this unanimous decision, the Court overruled *Betts v. Brady* (1942) by asserting that the due process clause of the 14th Amendment extends to state as well as federal defendants the Sixth Amendment guarantee that all persons charged with serious crimes will be provided the aid of an attorney. Furthermore, states are required to appoint counsel for defendants who can not afford to pay their own attorney fees. (p. 14)

***Gitlow v. New York*, 268 U.S. 652 (1925)**

In this 7-2 decision, although it went against Gitlow, the Court held that the First Amendment prohibition against government abridgment of freedom of speech applies to states as well as the federal government. The freedom of speech and press "are among the fundamental personal rights and liberties protected by the due process clause of the 14th Amendment from impairment by the states," the Court asserted. (pp. 14, 45-47)

***Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988)**

In this 5-3 decision, the Court held that public school authorities may censor student speech which takes place in school sponsored forums. Justice White writing for the majority, argued that the school newspaper *Spectrum* is not a public forum, and the newspaper is sponsored by the school. Therefore, school authorities may exercise editorial control over its contents. (pp. 54, 59, 60-62, 70)

***Katz v. United States*, 389 U.S. 247 (1967)**

In this 7-1 decision, the Court abandoned its view in the 1928 decision in *Olmstead v. United States*, which asserted that electronic surveillance and wiretapping were not "searches and seizures" within the scope of the Fourth Amendment. The Fourth Amendment protects whatever an individual wants to preserve as private, including conversations and behavior, even in a place open to the public. (pp. 49, 51)

***Mapp v. Ohio*, 367 U.S. 643 (1961)**

In this 5-4 decision the Court concluded that evidence obtained in violation of the Fourth Amendment guarantee against unreasonable search and seizure must be excluded from use at state as well as federal trials. (p. 49)

***Marbury v. Madison*, 1 Cr. 137 (1803)**

In this unanimous decision, the Court concluded that a part of the Judiciary Act of 1789 was unconstitutional. The Court's new claim to declare acts of Congress unconstitutional was a bold precedent-setting decision. (p. 42-44, 69)

★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★

***Marshall v. Barlows, Inc.*, 436 U.S. 307 (1978)**

In this 5-3 decision, the Court held unconstitutional the provision of the Occupational Safety and Health Act of 1970 which allowed warrantless inspection of covered businesses. A federal inspector must obtain a search warrant when the owner of the business to be inspected objects to a warrantless search. (p. 49)

***McCulloch v. Maryland*, 4 Wheat. 316 (1819)**

In this unanimous decision, the Court declared that the Constitution gives Congress "implied powers" needed to carry out its express powers. The Supreme Court strengthened the federal government's powers relative to the state governments by striking down Maryland's law to tax a federally chartered bank. (p. 69)

Michigan v. Sitz*, ★ U.S. ★ (1990)

In this 6-3 decision, the Court declared that the police may stop automobiles at roadside checkpoints and examine the drivers for signs of intoxication. Evidence obtained in this manner may be used to bring criminal charges against the driver. *This case is recent enough so that volume and page numbers have not yet been assigned. (p. 50)

***Near v. Minnesota*, 283 U.S. 697 (1931)**

In this 5-4 decision, the Court declared that a state law which bars continued publication of a newspaper that prints malicious or defamatory articles is in violation of the Fourteenth and First Amendments. This was the first time that the Court used the Fourteenth Amendment to enforce the First Amendment's guarantee of freedom of press against abridgment by a state. (pp. 46-47)

***New Jersey v. T.L.O.*, 469 U.S. 325 (1985)**

In this 5-4 decision, the Court concluded that school officials do not need a search warrant or "probable cause" to conduct a reasonable search of a student. Unlike the police and other government agents in society at-large, school officials were given the right to conduct searches and seizures based only on a "reasonable" suspicion that wrong-doing would be discovered. Justice White, writing for the majority, reasoned that the special characteristics of school settings and teacher-student relationships "make it unnecessary to afford students the same constitutional protections granted adults and juveniles in a non-school setting." (pp. 49, 54, 58, 60-62)

***New York Times Company v. Sullivan*, 376 U.S. 254 (1964)**

Until this unanimous decision, libelous statements had not been protected by the First Amendment. The Court held that the First Amendment guarantee of freedom of the press protects the press from libel suits for defamatory reports on public officials unless the officials prove that the reports were made with actual malice. Actual malice is defined as "with knowledge that it [the defamatory statement] was false or with reckless disregard of whether it was false or not." (p. 14)

***New York Times Company v. United States*, 403 U.S. 713 (1971)**

In this 6-3 decision, the Court ruled that the government had failed to meet "the heavy burden of showing justification" for restraining further publications of the "Pentagon Papers." The 47-volume, 7,000-page history, known as the "Pentagon Papers," revealed that American involvement in the Vietnam War had been more than U.S. officials had ever

publicly admitted. Copies of the "Pentagon Papers" were made available to the press by Daniel Ellsberg, who had been a government analyst and then became an anti-war activist. The government sought to restrain both the *Times* and the *Washington Post* from further publications of this kind. (p. 14)

***Olmstead v. United States*, 277 U.S. 438 (1928)**

In this 5-4 decision, the Court concluded that wiretaps do not violate the Fourth Amendment's prohibition against unreasonable searches and seizures where no entry of private premises occurred. This decision was reversed in *Katz v. United States* (1967). (pp. 29-30, 49, 51)

***Plessy v. Ferguson*, 163 U.S. 537 (1896)**

In this 8-1 decision, the Court established the doctrine of "separate but equal" by upholding a state law that required trains to provide "separate but equal" facilities for Black and white passengers. The Court asserted that the law did not infringe upon federal authority to regulate interstate commerce, nor was it in violation of the Thirteenth or Fourteenth Amendments. This decision was reversed in *Brown v. Board of Education of Topeka* (1954). (p. 14)

***Roe v. Wade*, 410 U.S. 113 (1973)**

In this 7-3 decision, the Court concluded that the right to privacy, grounded in the Fourteenth Amendment's due process guarantee of personal liberty, encompasses and protects a woman's decision whether or not to bear a child. During the first trimester of pregnancy, the decision to have an abortion is left entirely to the woman and her physician. During the second trimester, the state may regulate the abortion procedure in ways reasonably related to maternal health, and in the third trimester, the state may forbid all abortions except those necessary to save the mother's life. (p. 14)

***Schenck v. United States*, 249 U.S. 47 (1919)**

In this unanimous decision, the Court concluded unanimously that the First Amendment is not an absolute guarantee. Freedom of speech and press may be constrained if "the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent." In its first decision dealing with the extent of protection afforded by the First Amendment, the Court sustained the Espionage Act of 1917 against a challenge that it violated the guarantees of freedom of speech and press. (p. 14)

***Stromberg v. California*, 238 U.S. 259 (1931)**

In this 7-2 decision, the Court used the Fourteenth and First Amendments to strike down a California statute which outlawed the displaying of a red flag because it symbolized "opposition to organized government." The Court concluded that if this kind of symbolic expression was restricted, more general political debate would be seriously jeopardized. (pp. 46-47)

***Terry v. Ohio*, 392 U.S. 1 (1968)**

In this 8-1 decision, the Court upheld the police practice of "stop and frisk," suggesting that when a police officer observes unusual conduct and suspects a crime is about to be committed, he or she may "frisk" a suspect's outer clothing for weapons. The majority opinion held that such searches do not violate the Fourth Amendment's prohibition against unreasonable searches and seizures. (p. 49)

★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★

***Texas v. Johnson*, 109 S. Ct. 2533 (1989)**

In this 5-4 decision, the Court agreed with the Texas Court of Appeals decision to reverse Johnson's conviction of violating a section of the Texas Penal Code which made it a crime to publicly burn the American flag. The Court concluded, "the way to preserve the flag's special role is not to punish those who feel differently about these matters. It is to persuade them that they are wrong." In a strong dissent, Chief Justice Rehnquist proclaimed, "I cannot agree that the First Amendment invalidates the Act of Congress and the laws of 48 of the 50 states, which make criminal the public burning of the flag." (p. 14)

***Tinker v. Des Moines Independent School District*, 393 U.S. 503 (1969)**

In this 7-2 decision, the Court declared that students have the right to engage in peaceful nondisruptive protest, recognizing that the First Amendment guarantee of freedom of speech protects symbolic as well as oral speech. The majority asserted that the wearing of black armbands to protest the Vietnam War was "closely akin" to the "pure speech" protected by the First Amendment, and therefore a public school ban on this form of protest, which did not disrupt the school's work or offend the rights of others, violated these students' rights. (p. 54, 57, 60-62)

***Twining v. New Jersey*, 211 U.S. 78 (1908)**

In this 8-1 decision, the Court refused to examine a New Jersey law permitting a jury instruction that an unfavorable inference could be drawn from the defendant's unwillingness to take the stand in his or her own defense. The Court held that the Fifth Amendment privilege against self-incrimination did not extend to the states. The Court said it may be "a just and useful principle of law," but it need not be required at the state level. However, the Supreme Court provided this guideline for future decisions about individual rights: "Is it [the right in question] a fundamental principle of liberty and justice which inheres in the very idea of free government and is the inalienable right of a citizen of such a government?" With this guideline, the way was opened to future applications to the states of rights in the federal Bill of Rights. (pp. 45, 47)

***United States v. Leon*, 468 U.S. 897 (1987)**

In this 6-3 decision, the Court asserted that evidence seized on the basis of a mistakenly issued search warrant can be introduced in a trial, if the warrant was issued in "good faith"—that is, on presumption that there were valid grounds for issuing the warrant. (p. 49)

***United States v. Ross*, 456 U.S. 798 (1982)**

In this 6-3 decision, the Court reversed itself by allowing police officers who have probable cause to suspect that drugs or other contraband are in a car they have stopped to search the entire vehicle as thoroughly as if they had a warrant. This also includes all containers and packages in the car that might contain the object of the search. (p. 49)

***Ware v. Hylton*, 3 Dall. 199 (1796)**

In this 4-0 decision, the Court ruled that treaties made by the United States overrode any conflicting state laws. This provision invalidated Virginia's law allowing debts owed by Virginians to British creditors to be "paid off" through payments by the state. The 1783 Treaty of Paris with Britain asserted that neither the United States nor Britain would allow its own citizens to secure repayment of debts in the other country. This decision exemplified the supremacy of the U.S. Constitution and treaties and federal laws made in conformity with it. (p. 42)

★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★

***Weeks v. United States*, 232 U.S. 383 (1914)**

In this unanimous decision, the Court declared that a person has the right to require that evidence obtained in a search be excluded from use against him in federal courts, if Fourth Amendment rights of protection against unreasonable searches and seizures are violated by federal agents. (p. 49)

***West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943)**

In this 6-3 decision, the Court upheld the right of Jehovah's Witnesses' children to refuse to participate in compulsory flag salute ceremonies in public schools. The decision overruled the 1940 opinion in *Minersville School District v. Gobitis* (1940) in which the majority asserted that religious liberty must give way to political authority so long as that authority was not used directly to promote or restrict religion. (pp. 11, 54-55, 60-62)

***Whitney v. California*, 274 U.S. 357 (1927)**

In this unanimous decision, the Court upheld a state law that made it a crime to organize and participate in a group that advocated the overthrow by force of the established government. The Court concluded that the state law was not a violation of the constitutional rights to freedom of speech and assembly. (p. 36)

***Wolf v. Colorado*, 338 U.S. 25 (1949)**

In this 6-3 decision, the Court declared that the Fourth Amendment protection of individuals against unreasonable searches and seizures by government agents applies to state as well as federal agents. However, state judges are not required to exclude evidence obtained by searches in violation of Fourth Amendment rights. (pp. 48-49)

References

Alley, Robert S. *James Madison on Religious Liberty*. Buffalo, New York: Prometheus Books, 1985, p. 76.

California State Board of Education. *History-Social Science Framework for California Public Schools, Kindergarten Through Grade Twelve*. Sacramento: California State Board of Education, 1988. ED 293 779.

Christman, Henry M., ed. *The Public Papers of Chief Justice Earl Warren*. New York: Simon & Schuster, 1959, p. 70.

Dennis v. United States, 341 U.S. 494 (1951).

Education for Democracy Project. *Education for Democracy: A Statement of Principles*. Washington, D.C.: American Federation of Teachers, 1987. ED 313 217.

Elam, Stanley M., "Anti-Democratic Attitudes of High School Students in the Orwell Year." *Phi Delta Kappan* 65 (January 1984): 327-332.

Engel v. Vitale, 370 U.S. 421 (1962).

Farrand, Max, ed. *The Records of the Federal Convention*, Volume I. New Haven, Connecticut: Yale University Press, p. 97.

Hamilton, Alexander, "*Federalist* No. 78," in Clinton Rossiter, ed. *The Federalist Papers* by Hamilton, Madison, and Jay. New York: New American Library, 1961, pp. 462-474.

Hand, Learned. *The Spirit of Liberty*. New York: Alfred A. Knopf, 1960, 189-190.

Hazelwood School District v. Kuhlmeier, 484 U.S. 260 (1988).

Hearst Report. *The American Public's Knowledge of the U.S. Constitution*. New York: The Hearst Corporation, 1987. ED 289 812.

Jefferson, Thomas. "Letter to James Madison" (20 December 1787), in Michael Kammen, ed. *The Origins of the American Constitution: A Documentary History*. New York: Viking Penguin, Inc., 1986, pp. 90-93.

Jefferson, Thomas. "First Inaugural Address" (4 March 1801), in Adrienne Koch, ed. *The American Enlightenment*. New York: George Braziller, 1965, pp. 404-407.

Kammen, Michael. *A Machine That Would Go of Itself: The Constitution in American Culture*. New York: Alfred A. Knopf, 1986.

Leming, James S. "Research on Social Studies Curriculum and Instruction: Interventions and Outcomes in the Socio-Moral Domain," in William B. Stanley, ed. *Review of Research in Social Studies Education, 1976-1983*. Washington, D.C.: National Council for the Social Studies, 1985. ED 255 469.

Madison, James. "Letter to Thomas Jefferson" (24 October 1787), in Michael Kammen, ed. *The Origins of the American Constitution: A Documentary History*. New York: Viking Penguin, Inc., 1986, pp. 65-76.

Madison, James. "Letter to Thomas Jefferson" (17 October 1788), in Michael Kammen, ed. *The Origins of the American Constitution: A Documentary History*. New York: Viking Penguin, Inc., 1986, pp. 367-371.

Madison, James. "Letter to William T. Barry" (4 August 1822), in Marvin Meyers, ed. *The Mind of the Founder: Sources of the Political Thought of James Madison*. Hanover, New Hampshire: University Press of New England, 1981, pp. 343-347.

Madison, James. "Autobiography," in Adrienne Koch, ed. *The American Enlightenment*. New York: George Braziller, 1965, pp. 427-436.

Marbury v. Madison, 1 Cr. 137 (1803).

Mason, George. "Objections to the Constitution of Government Formed by the Convention," in Michael Kammen, ed. *The Origins of the American Constitution: A Documentary History*. New York: Viking Penguin, Inc., 1986, pp. 255-258.

McCloskey, Herbert, and Alida Brill. *Dimensions of Tolerance: What Americans Believe about Civil Liberties*. New York: Russell Sage Foundation, 1983.

Michigan State Board of Education. *Essential Objectives for Social Studies Education in Michigan (K-12)*. Lansing: Michigan State Board of Education, 1987. ED 290 637.

National Assessment of Educational Progress, *The Civics Report Card*. Princeton, New Jersey: Educational Testing Service, 1990. ED 315 376.

New Jersey v. T.L.O., 469 U.S. 325 (1985).

Newmann, Fred M. *Higher Order Thinking in High School Social Studies*. Madison, Wisconsin: National Center on Effective Secondary Schools, 1988. ED 304 352.

Oliver, Donald W., and James A. Shaver. *Teaching Public Issues in the High School*. Boston: Houghton Mifflin Company, 1966.

Olmstead v. United States, 277 U.S. 438 (1928).

Patrick, John J. "Political Socialization and Political Education in Schools," in Stanley Allen Renshaw, ed. *Handbook of Political Socialization: Theory and Research*. New York: The Free Press, 1977, pp. 190-222.

Patrick, John J., and Richard C. Remy. *Lessons on the Constitution*. Washington, D.C.: Project '87 of the American Historical Association and American Political Science Association, 1985. ED 258 981.

Quigley, Charles N., et al. *Preliminary Report on High School Students' Knowledge and Understanding of the History and Principles of the United States Constitution and Bill of Rights*. Calabasas, California: Center for Civic Education, 1987.

Ravitch, Diane, and Chester E. Finn, Jr. *What Do Our 17-Year-Olds Know? A Report on the First National Assessment of History and Literature*. New York: Harper & Row, 1987.

Remmers, H.H., and Richard D. Franklin. "Sweet Land of Liberty," in H.H. Remmers, ed. *Anti-Democratic Attitudes in American Schools*. Evanston, Illinois: Northwestern University Press, 1963, pp. 61-72.

Rodriguez, Kenneth. *Teacher Resource Manual for Law and Civics*. Albuquerque, New Mexico: New Mexico Bar Foundation, 1989.

Rutland, Robert Allen. *The Birth of the Bill of Rights, 1776- 1791*. New York: Collier Books, 1962, p. 206.

Starr, Isidore. *The Idea of Liberty: First Amendment Freedoms*. St. Paul, Minnesota: West Publishing Company, 1978.

Tinker v. Des Moines Independent School District 393 U.S. 503 (1969).

Turner, Mary Jane, and Lynn Parisi. *Law in the Classroom: Activities and Resources*. Boulder, Colorado: Social Science Education Consortium, 1984. ED 247 190.

West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943).

Whitney v. California, 274 U.S. 357 (1927).

Wolf v. Colorado 338 U.S. 25 (1949).

Notes

ANTI-DEFAMATION LEAGUE OF B'NAI B'RITH
823 UNITED NATIONS PLAZA, NEW YORK, NEW YORK 10017